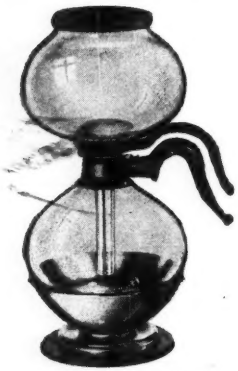
Public Utilities

FORTNIGHTLY

December 8, 1938

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

Let Santa's Load Increase Yours



What a stunning Christmas gift the Delray Electric Table Model will make at

$4.95

There's extra gift app for customers—and e load for you—in Anyh Control models from

$5.95

Christmas gives you one of the year's biggest opportunities to boost your appliance load with Silex Glass Coffee Makers. They make perfect gifts—because they brew perfect coffee!

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Sizes—2 to 12 cups.

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The Silex Company, Dept. (P. 12), Hartford, Conn.

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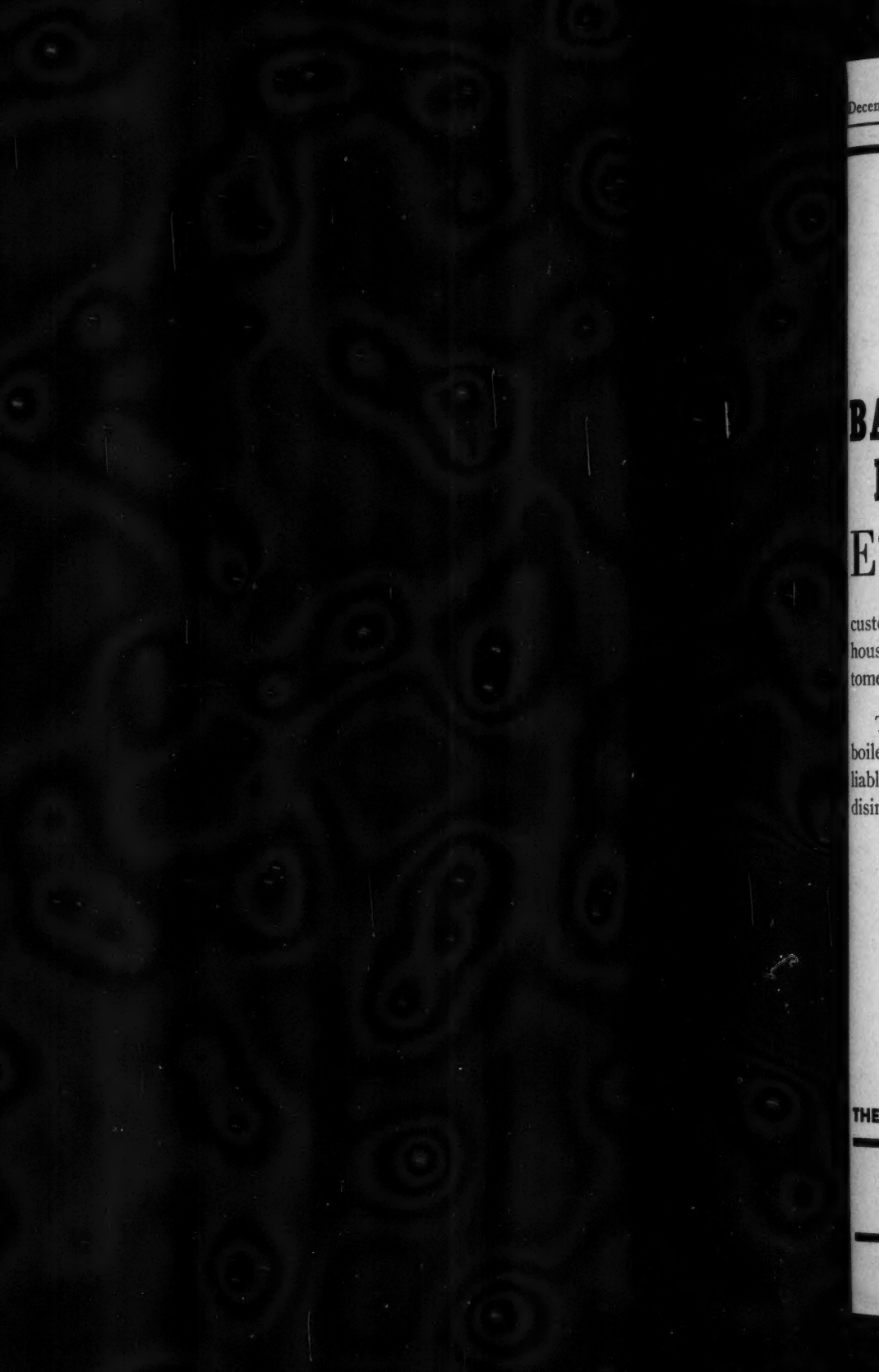
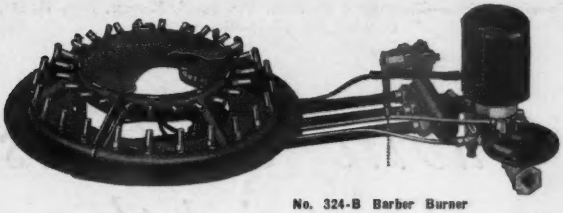
BREWING COMPLETED WITHOUT REMOVING GLASS FROM STOVE





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BARBER Conversion BURNERS-- Light The Way To Gas Heat

EQUIPMENT for automatic gas heat can, and should, be sold not only on the basis of comfort and economy—but as a method of freeing American housewives from antique drudgery. Show your feminine customers how easily they can heat with gas and use the furnace now in the house. Barber Conversion Burners will increase your sales to satisfied customers.

There is a Barber assembly designed to fit properly every furnace or boiler, of any make, size or shape. Economical to install and operate. Reliable in performance, cuts down service calls. Barber offers active merchandising cooperation to Gas Companies and heating equipment dealers.

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- **Insures a "scrubbing" flame action on side walls of fire box, at the proper level, with 1900° Fahrenheit flame temperature. No fire brick or refractory elements needed.**
- **Furnished with Baltimore Safety Pilot Control—positive and accurate. Listed in the A. G. A. Directory of Approved Appliances.**

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For Warm Air Furnaces, Steam and Hot Water Boilers and Other Appliances

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Contributing Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXII *December 8, 1938* NUMBER 12

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

THE ICC has "been workin' on the railroads." But, unlike the popular old song, the ICC has been occupied in this way not merely "just to pass the time away." It has been very much in earnest about it for over a half century. In fact, the ICC celebrated its Golden Jubilee only last year.

DURING these fifty years of regulation, the ICC has witnessed the evolution of the railroad industry from a lusty young pioneer with somewhat riotous manners into a steady, profitable business enterprise and finally into a worrisome national problem beset with deficits, receiverships, and hardening of the arteries. This is not to characterize the railroad as a moribund industry nor to lay the blame for its troubles entirely at the door of regulation. There have been other factors—many others—which have rushed the American railroads through the Seven Ages within the brief span of a half century.

Of course, we'll always have railroads in one form or another and under one system of management or another. The principal difficulty just now seems to be the problem of cutting down excess railroad trackage without cutting down railroad payrolls or security structures. All factions seem to agree that railroads ought to be integrally coördinated through merger programs designed to put them into a sounder economic condition with greater earning power. But when it comes right down to a specific paring operation to accomplish this, capital and labor both seem to want to eat their respective cakes and have them too.

HAROLD D. KOONTZ

All interested factions agree there should be more railroad economy but not at their own expense.

(SEE PAGE 746)

JOHN F. CHILDS

How does the operating electric company bond show up as a conservative yet profitable investment?

(SEE PAGE 739)

THE recent ICC decision in the merger cases involving the Chicago, Rock Island & Gulf Railway Trustees' Lease and the Louisiana, Arkansas & Texas Railways is a pertinent example of the regulatory puzzle of trying to reconcile the merger of railroads with the pleasanter occupation of making friends and influencing people. The ICC majority (4th division) imposed drastic conditions with respect to employees in the event that these railroads do merge. Dissenting Commissioner Mahaffie was moved to wonder how, under a general statutory power to conserve the public

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J&L SEAMLESS goes into your *Power Piping* job

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You can depend upon J & L Seamless to carry t load. There are no weaknesses to invite trouble cause plant shut-downs. Specify J & L Seamless Pi for all future power and process requirements — a for replacement jobs as well. You'll find that J & Seamless stands up under the most severe treatme gives years of trouble-free service and saves money in lower maintenance costs.

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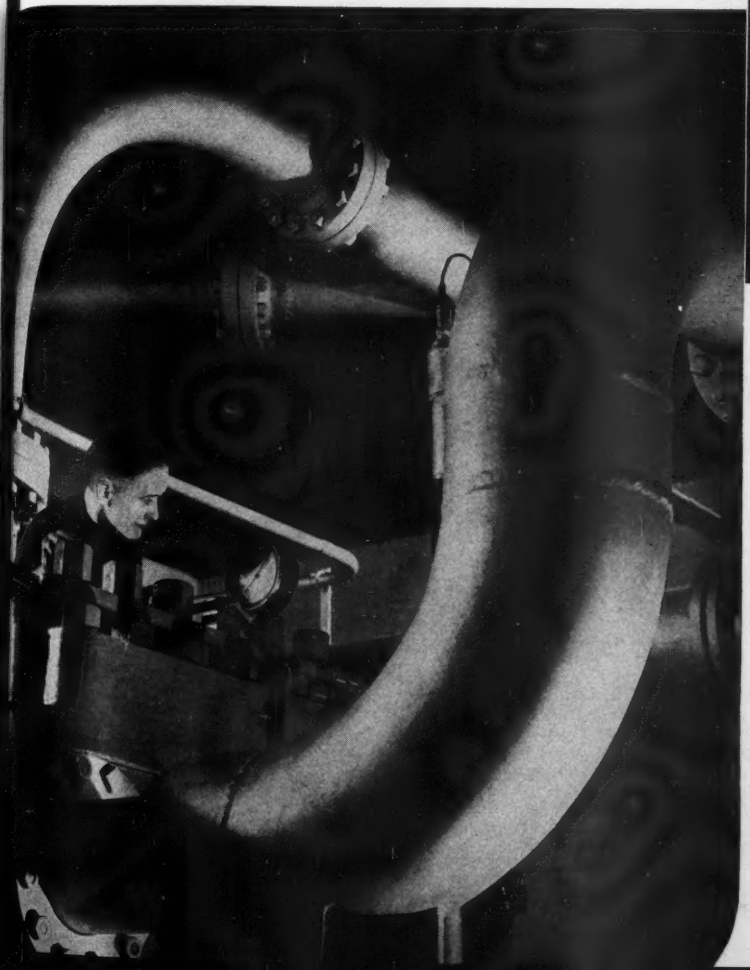

J&L PIPE

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interest in merger proceedings (Transportation Act, §5(4) (b)), the ICC ever got any authority from Congress in the matter of railway employees' wages.

EVEN if it does have such authority, the "authorization" of a railroad merger upon condition that employee payrolls shall not suffer is hardly a practical solution. The ICC might as well tell the railroads that they are welcome to swim in the merger pond provided they "hang their clothes on a hickory limb and don't go near the water."

WE mention this merger dilemma simply because of its relevancy (as a recent demonstration of the manifold problems of railroad rehabilitation) to the second instalment of the 2-part series on "The Railroad Crisis" by HAROLD D. KOONTZ, which appears in this issue (beginning page 746). DR. KOONTZ (Ph. D., Yale, '35) is at present associate professor of economics at Colgate University.

THE recent destruction by the electorate of the House of LaFollette as the ruling political power in the state of Wisconsin promises to have some interesting repercussions in the public ownership movement which has always been vigorously promoted in the Badger state by the Progressive party. For example, will the Republicans, once more in control of the legislature and governorship, put the skids under Governor Phil LaFollette's pet project, Wisconsin Hydro Authority? How will the privately owned utilities respond to the change, if at all?

WELL, according to an article in this issue, it is strictly up to the utility companies to speak their piece and toot their own horn if they are going to make any comeback in Wisconsin. FRANK A. ZUFELT, author of this article (starting page 760), was born and raised in that state and still lives there. This background gave him a chance to observe public ownership at close range. MR. ZUFELT concluded some years ago that he doesn't like it, and has said so repeatedly in the *Sheboygan Telegram*, a daily which he owned and published for twenty of his thirty-four years of journalistic experience.

WITH the outlook so unsettled in all directions, pity the poor chap whose duty it is to invest other people's money in secure investments at a reasonable profit. Conflicting reports make the task no easier. On the heels of hopeful signs of resurgence in domestic business, international tidings prompt doubts as to whether the peace of Munich will stay put for even another year. Soon after the electoral indications that the Republicans are on the way back politically, and that the American people may be turning ever so slightly towards the Right, we get rumors that the Brain Trust is loose in Washington again and is just about to pull another bugaboo for big business out of its large-sized hat. And, of course, there is always the problem of guessing whether inflation is just around the corner or whether this wouldn't be the proper season for curling up beside some nice bank book and keeping your extra change in your mouth.

FRANK A. ZUFELT

If private ownership has a case, it had better state it before the other side wins by default.

(SEE PAGE 760)

WELL, for those who have decided to string along with the more conservative bonds other than government securities, there is always the operating utility company bond. What does it look like now? Has its attractiveness improved relatively during the last few months, or is it beginning to show signs of wear and tear from the conflict between the electric utility industry and the Federal administration? What is its outlook in view of prospective enforcement of various regulatory laws? Some light on these perplexing questions may come to you if you read "A Glance at Electric Power Operating Company Bonds" by JOHN F. CHILDS (page 739) in this issue. Born in New York, MR. CHILDS was raised in New England, attending Trinity College (M. S., '32) in Hartford, Conn., and Harvard Graduate Business School (M. B. A., '33). For the last four years he has been employed as a public utility security analyst with one of the leading security investment firms in New York city.

THE next number of this magazine will be out December 22nd.

The Editors

In This Issue

In Feature Articles

In Financial News

In What the State Commissioners Are Thinking About

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 353-416, from 25 P.U.R.(N.S.)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EDWARD G. NOBLE
Chairman, Civil Aeronautics Authority.

"It is 300 per cent safer to fly this year than it was in 1930."

FRANKLIN E. PARKER, JR.
President, American Arbitration Association.

"It [arbitration] substitutes the sit-down talk for the sit-down strike."

FIORELLO H. LAGUARDIA
Mayor of New York city

"There is no Democratic or Republican way to dig a foundation or build a bridge."

H. STYLES BRIDGES
U. S. Senator from New Hampshire.

"New England wants no Buchanan dams, and its states will not surrender sovereignty to get them."

JOHN C. PAGE
Commissioner, Bureau of Reclamation.

"Too often thoughtful investigations result only in a report which collects dust on library shelves."

SAMUEL O. DUNN
Editor, Railway Age.

"The result of the present railway wage controversy probably will determine the fate of private ownership of railways in this country."

ALEXANDER SHAPIRO
Director of Personnel, Capital Transit Company.

"The selection of an employee is a peculiar type of investment since there is little or no hope of salvaging any part of it if a mistake is made."

WILLIAM O. DOUGLAS
Chairman, Securities and Exchange Commission.

"It is the American tradition to insist on keeping to an irreducible minimum regimentation in any form, particularly a 'thou shalt not' regimentation."

EDITORIAL STATEMENT
Broadcasting.

"Radio may be a profit-making industry (for its well-fed, well-clothed two-thirds), but there isn't any other we know about with so many grey-haired young men."

JAMES V. ALLRED
Governor of Texas.

"Increase in the number of interstate trade barriers has approached the point where they may return the United States to a 'confederation' with respect to trade relations."

HERMAN A. GRAY
Professor of Law, New York University.

"It certainly is preferable to have a system of labor relations resting on a sense of responsibility and mutual trust rather than on the fiat of governmental authority."

ROBERT F. WAGNER
U. S. Senator from New York.

"Recovery is not a commodity which can be purchased in the market place, all packaged, labeled, and priced. Recovery is the product of the harmonious functioning of business, agriculture, and labor."

REEVES NEWSOM
President, American Water Works Association.

"Water and water service, although it is more fundamental than any other utility service, is taken for granted by the average man to a greater extent than any other commodity or element of modern civilized life."

THOMAS I. PARKINSON
President, Equitable Life Assurance Society.

"The monopoly I fear most is the monopoly of government by the Federal organization. I should like to see the monopoly investigating committee study the concentration of power in the Federal government over the economic life of the people."

WALTER M. PIERCE
U. S. Representative from Oregon.

"In this world of ours, nature has so ordained matters that no person, no piece of machinery or man-made property is endowed with perpetual life. Failure to recognize this principle in financial operations is one of the sins of our modern capitalistic system."

GEORGE D. AIKEN
Governor of Vermont.

"Many states seem to feel that if the Federal government will make a monetary payment for the resources and sovereignty acquired, then all is well. As taxpayers and citizens we are selling our liberty and also furnishing the money to buy it from us, when we make a trade of this nature."

HALE HOLDEN
Chairman, Southern Pacific Company.

"The empirical theory that 'ability to pay' should not be considered as a factor in wage disputes may be applied with caution to local or isolated situations in peculiar circumstances, but it has no application to a key industry such as the railroads, which cannot be superseded as a system by any other form or forms of transportation."

JAMES J. DAVIS
U. S. Senator from Pennsylvania.

"It must now be evident that the major need of this country is not for more transportation facilities such as might be provided by the St. Lawrence waterway; instead, we need a better use of such transportation facilities as we now have. It is evident that our major need is not new sources of power, light, and heat, but better use of such sources as are now at our command, languishing because we do not put them to sufficient use."

Output Resumes Its Rise

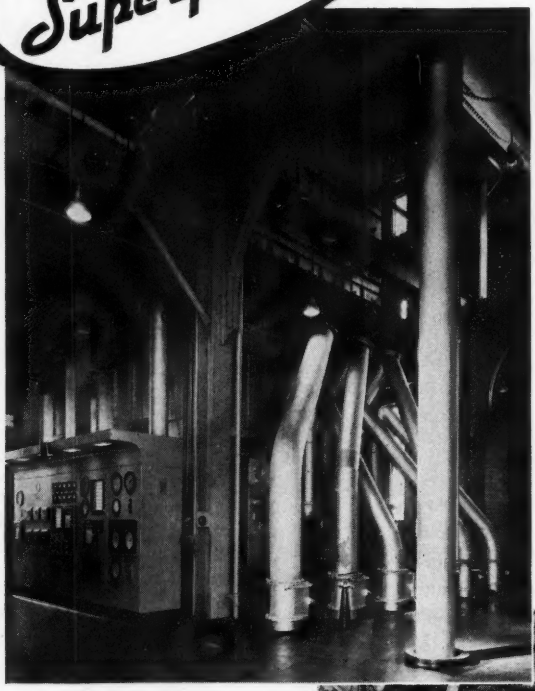
Continues above 1936—Catching up with 1937—New England recovers—Gains are general

With the production of 2,182,751,000 kw.-hr. in the week ended October 15, according to the Edison Electric Institute, the output curve of the electric light and power industry resumed the upward trend that had been interrupted during the three preceding weeks. The output was the largest for any week thus far in 1938 with the single exception of the week following Labor day. With the same exception, also, it approached most nearly to the output a year ago, the disparity being cut to 4.1 per cent. The increase restored the lead over 1936 which has characterized the operations of the past half

The outstanding [illegible] gions

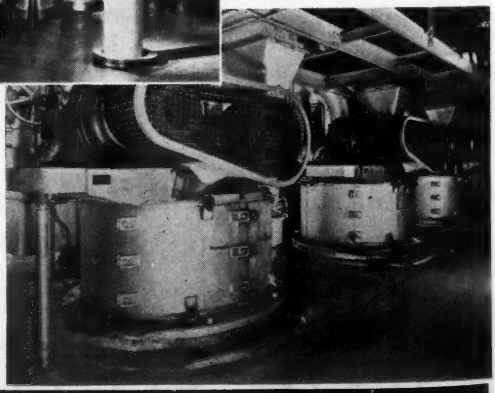
2 B & W

Central Station Boilers for Superposition



Control panel and burner pipes of one of the B&W High-Head Boilers at Millers Ford Station, Dayton Power & Light Company.

Three B&W Pulverizers, located at basement floor level, fire each boiler.



THE BABCOCK &

HIGH-HEAD BOILERS in MILLERS FORD "TOP"

DAYTON POWER & LIGHT CO., DAYTON, OHIO

STATION CAPACITY RAISED 23%

COAL CONSUMPTION
CUT TO LESS THAN 1 LB./Kw-Hr.

Situation ..... Increase in load on the system indicated that additional capacity should be added in 1936. Due to low stream flows in the Miami River during the summer months, it was not advisable to add condensing capacity.

Solution ..... Hydrogen-cooled topping unit of 25,000 kw. added to existing 110,000-kw., 230-lb. pressure system placed in service in 1918. Three oldest boilers removed to make room for new turbine—station addition built for two new high-pressure boilers and related equipment. New boilers and turbine on same elevation with no division wall between.

New Boilers ..... Capacity each, 375,000 lb. steam per hour. Designed for 1375 lb. per sq. in. pressure, 900 F. steam temperature. Direct fired with pulverized coal by three B&W Pulverizers.

Design ..... B&W High-Head Boilers with Bailey Water-Cooled Hopper-Bottom Furnaces for burning bituminous coal having 2800 F. fusing-temperature ash. Boilers of single-pass design with upper gas space in two sections—economizer in one space and superheater in the other. Constant superheat temperature obtained over wide range of capacities by damper regulation of gas flow over the superheater.

Results ..... Station capacity increased 23 per cent—from 110,000 kw. to 135,000 kw. Coal consumption of the new units less than one pound per kw-hr.

THE BABCOCK & WILCOX COMPANY
85 LIBERTY STREET . . . . . NEW YORK, N. Y.

WILCOX COMPANY

INTERNATIONAL TracTracTors . . .
the Most Accessible, Most Easily Serviced Crawler Tractors on the Market

Specify International TracTracTors where crawler power is needed and save money on a wide variety of jobs. This picture shows the compact Model T-20 on typical "off-track" railroad work.

When International Harvester engineers started laying out International TracTracTors, they designed for power . . . and for accessibility of all working parts to keep maintenance costs at the minimum. Every owner and operator knows the results—TracTracTors are the most accessible, most easily serviced crawler tractors on the market. All parts, and the steering clutches and brakes are so easy to get at that maintenance is surprisingly low. Steering clutches and brakes in TracTracTors can be inspected, adjusted, or replaced through rear cover plates without disturbing the track, track frame, or driving sprocket. Special dust seals protect the bearings of the drive gear and pinion shaft, the track rollers, and idler bearings. Oil and lubricants are sealed in. Dirt, grit, water, etc., are sealed out. For complete information on International TracTracTors and Wheel-type Tractors, see the nearby International industrial power dealer or Company-owned branch.

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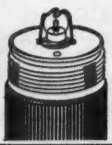
The new "Eveready" Safety Flashlights are of high quality semi-hard rubber reinforced with brass, with unbreakable, plastic lenses, special protected lamp and hand-replaceable, heavy-duty slide switch with positive "off" and "on" positions. Hexagonal heads prevent rolling, ring-hangers add to convenience.

"Eveready" Safety Flashlights resist water, oils, greases, gasoline, alcohol, acids, alkali, are non-conducting and proof against impact and dropping.



Guard wire holds lamp in spring-loaded socket. Should bulb break, spring ejects lamp-base, instantly opening electric circuit and thrusting hot filament against chilling guard wire.

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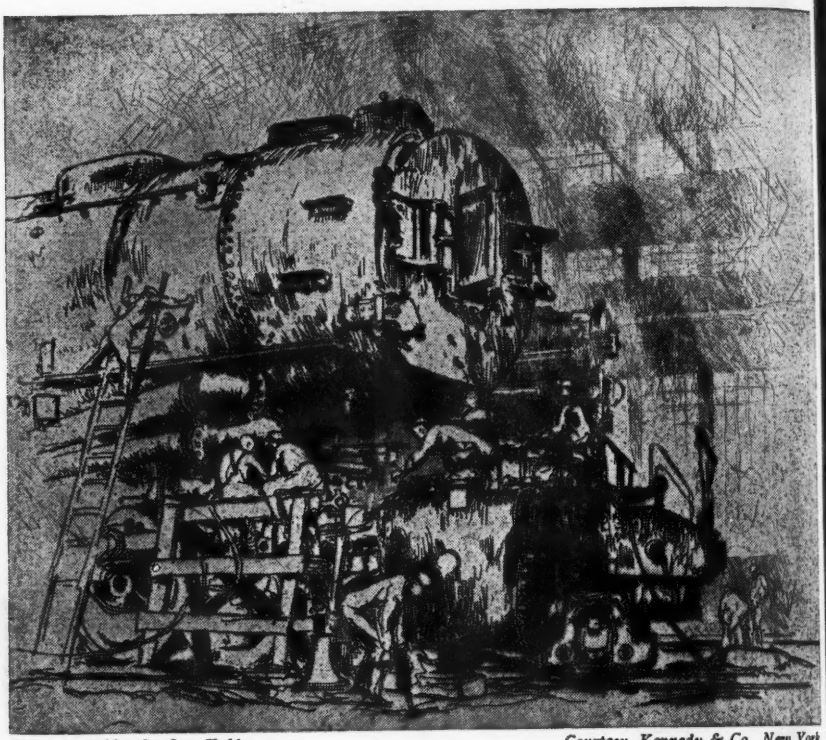
Unit of Union Carbide UCC *and Carbon Corporation*

The word "Eveready" is the trade-mark of National Carbon Co., Inc.

Utilities Almanack

DECEMBER

8	Th	¶ *American Public Welfare Association opens meeting, Washington, D. C., 1938.*
9	F	¶ *American Society of Mechanical Engineers ends annual meeting, New York, N. Y., 1938.*
10	Sa	¶ *Thirteenth National Exposition of Power & Mechanical Engineering is concluded, New York, N. Y., 1938.*
11	S	¶ *American Statistical Association will hold convention, Detroit, Mich., December 27–30, 1938.*
12	M	¶ *Second Annual Accounting Conference, EEI-AGA, opens, Chicago, Ill., 1938.*
13	Tu	¶ *American Association for the Advancement of Science will hold winter meeting, Richmond, Va., December 27–31, 1938.*
14	W	¶ *Tax Policy League will convene for meeting, Detroit, Mich., December 28–30, 1938.*
15	Th	¶ *American Water Works Association, New York Section, will hold meeting, New York, N. Y., December 29, 1938.*
16	F	¶ *Mid-West Shippers Advisory Board will hold annual meeting, Chicago, Ill., January 3, 1939.*
17	Sa	¶ *American Engineering Council will hold convention, Washington, D. C., January 12–14, 1939.*
18	S	¶ *American Society of Civil Engineers will hold annual convention, New York, N. Y., January 18–20, 1939.*
19	M	¶ *Engineering Institute of Canada will hold convention, Ottawa, Ont., February 20–22, 1939.*
20	Tu	¶ *Associated General Contractors and American Road Builders Association will hold conventions and exhibit, San Francisco, California, March 5–11, 1939.*
21	W	¶ *American Water Works Association, Canadian Section, will convene for session, Toronto, Ont., April 12–14, 1939.*



From an etching by Otto Kuhler *Courtesy, Kennedy & Co., New York*

Monster and Midgets

Public Utilities
FORTNIGHTLY

VOL. XXII; NO. 12 DECEMBER 8, 1938

A Glance at Electric Power Operating Company Bonds

Various factors influencing rise and fall in values—effect of government competition.

BY JOHN F. CHILDS

BECAUSE of the political persecution which the electric power and light industry is experiencing, an investor in the securities of such companies is apt to become panicky at times and lose faith in them. Especially in view of the fact that bonds of some of the good companies are selling 20 points lower than they would if it were not for the threat of government competition. In order to keep one's faith it is perhaps necessary once in a while to put both feet on the ground and look over the actual facts which the industry presents. The various types of securities such as bonds and stocks require somewhat different considerations, and attention in this article is directed particularly at the bonds of the operating companies.

It may be first well to remember that the electric power and light operating company bonds have so thoroughly proven their worth for many years that they have assumed a prominent place among the bonds considered legal for savings banks in the various states, which requires that they represent a very high degree of safety. For example, approximately one-third of the total par value of corporate bonds eligible for purchase by savings banks in New York state was represented by those of electric power and light com-

panies, according to the legal list published July 1, 1938. Railroad bonds formerly assumed a very dominant position on this legal list, but because of the current plight of the railroads the importance of electric power and light company bonds has been greatly enhanced. The fundamental reason for their high rating is obviously due to the fact that the industry has generally been prosperous; that is, it has had a good earnings record, but, in addition, it has certain particularly favorable characteristics. One of these characteristics is the broad earnings base or, in other words, the large margin of earnings available for fixed charges in per cent of gross revenues. Another is the relative stability of gross revenues during a business recession, tending to make the bonds act favorably marketwise.

Perhaps the most universally used single test for the quality of a bond is the number of times fixed charges are earned. However, this figure, being dependent upon two factors — the amount of net income and the size of the fixed charges—tends to obscure the first fundamental reason mentioned above for the strength of electric power and light operating company bonds; namely, the broad earnings base. This makes them relatively free from quick change in credit standing due to a moderate decrease in gross revenues or increase in expenses. It would, of course, not be necessary to give consideration to this factor if expenses fluctuated in direct ratio with operating revenues, because then two bonds with the same coverage of fixed charges would have equal strength from the point of view of earnings protection no matter how much difference there was in the size of the earnings base. Such, however, is obviously not the case.

THE situation can, perhaps, best be illustrated by referring to the recent violent change in credit position of a company outside of the power and light field, which has a very slim earnings base. During 1936 this company covered its fixed charges roughly two and one-half times, and its bonds were selling above par. The reason for the liberal coverage was the fact that the burden of fixed charges was not heavy, amounting to 5 per cent of gross revenues, but net income available for fixed charges was only 12 per cent. During 1937 this company experienced a 2 per cent increase in gross revenues and an increase in expenses of 7 per cent. Even though this was not a very substantial change in expenses, owing to the small earnings base, coverage fell precipitously to approximately one and three-quarters times, in spite of the fact that fixed charges decreased. By the end of 1937 its bonds had depreciated more than forty points.

In 1936 three fairly representative electric power and light companies had an average coverage for fixed charges of two and one-fourth times, or slightly below that of the company referred to above, and their bonds were selling to yield about the same as those of that company. However, they had a much broader earnings base with an average of 34 per cent of gross revenues available for fixed charges. Fortunately, they did not experience the same change in gross revenues and expenses as that company, but for purposes of illustration, assuming that such had been the case, their average coverage would still have been two times.

STATED in other words, electric power and light companies' operating expenses do not absorb more than a moderate amount of gross revenues. The industry requires a substantial plant investment to which a large share of the earnings must be applied in order to compensate all of the various types of security holders that have contributed the capital. Thus, if a company's capitalization is conservative, there is a liberal portion of earnings available for, as well as remaining after, fixed charges; and it seems fair to say that the operating companies as a whole appear to be at least moderately capitalized. In 1932, the latest period for which such statistics are available, the U. S. Census figures indicated that the funded debt of all commercial electric companies in the U. S. was outstanding at $2.94 per dollar of their gross revenues. This compares with the very rough rule of thumb test for the sound value of an electric power and light company's property of $5 of property per dollar of gross revenues, demonstrating that the capitalization from the point of view of the ratio of bonds to property is probably at least fairly reasonable.

It is interesting to note that the electric power and light industry as a whole, including coördinated services, covered fixed charges 2.28[1] times in 1936, the latest period for which such figures are available. This is as much as the Class I railroads covered their fixed charges in 1929, their most profitable year. Furthermore, the electric power and light industry in 1936 had 35 per cent of gross revenues available for fixed charges, or almost half again as large a margin as the Class I railroads had in 1929. Based on figures for 1936 and assuming no change in gross revenues, expenses of the electric power and light industry as a whole, excluding depreciation, could increase 35 per cent before fixed charges would fail to be covered. And similarly, since there was 20 per cent[2] of gross revenues remaining after fixed charges, gross revenues could fall off by a like percentage, assuming that there is no saving in expenses, and fixed charges would still be covered. Thus the operating company bonds as a whole are certainly afforded strong protection by earnings.

THE other particularly favorable feature of electric power and light operating company bonds as mentioned above is the fact that the industry resists fairly well the influences of a business recession, and as a result the bonds act well marketwise in such a period. This is obviously because industrial customers on the average only account

[1] Edison Electric Institute—Bulletin No. 5—page 2.

[2] Edison Electric Institute—Bulletin No. 5—page 2.

¶ *". . . electric power and light companies' operating expenses do not absorb more than a moderate amount of gross revenues. The industry requires a substantial plant investment to which a large share of the earnings must be applied in order to compensate all of the various types of security holders that have contributed the capital."*

for approximately one-third of gross revenues, the balance being derived from the more stable residential and commercial load. There is also the fact that the industry still seems to be blessed with a long-term upward trend in demand.

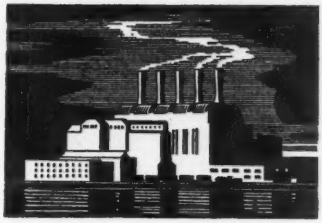
The relative market stability of electric power and light operating company bonds can perhaps best be illustrated by making a comparison of their action with industrial bonds during the period from 1929 to 1932. Ten of the highest grade industrial bonds, which were selling to afford an average yield of approximately 5 per cent in January, 1930, fell an average of 10½ points by July, 1932. Most of these companies were covering their fixed charges by very wide margins in 1929, but the sales of the seven of them for which such information is available showed an average decrease of more than 50 per cent from 1929 to 1932, and in the latter year five out of the ten were reporting deficits before fixed charges. An equal number of fairly comparable electric power and light company bonds which were selling to afford almost exactly the same average yield in January, 1930, only fell an average of 3 points, or less than one-third as much. These companies experienced only an average decrease in gross of 9 per cent between 1929 and 1932, and in the latter period they were all covering their fixed charges by comfortable margins.

RECENTLY certain figures were published in the PUBLIC UTILITIES FORTNIGHTLY, which were compiled by Dean Madden and Professor Dorau of New York University, showing the default record of various types of securities from 1929 to date. It casts such a favorable light on electric power and light operating company bonds that it is worth repeating and is as follows:

Electric operating	1.6%
Manufactured gas operating	2.4%
Municipal bonds (in default)	5 to 10%
Foreign bonds (in default)	38.5%
Railroads	21.7%
Tractions	41.8%
Real estate (in default)	61.7%

It is true that for the investor and the utility analyst, the threat of government competition has been a sad headache, and possibly certain companies may eventually be damaged. Nevertheless, the idea of competing electric power and light systems is so absolutely absurd that competition cannot progress very far as long as there is any sanity whatsoever left in the country. This may be wishful thinking, but it seems reasonable to place some faith in such a belief, and the absurdity of competition has been repeatedly stressed by J. D. Ross, one of the foremost advocates of municipal ownership, who is superintendent of the Seattle municipal plant and also administrator of the Bonneville power project. A significant comment in this connection was made in the 1937 annual report of the Seattle municipal plant (J. D. Ross, superintendent). In Seattle the municipal plant has competed with a private company for many years. The comment follows:

> City Light's distribution costs in Seattle are increased by the competition of the power company because of the resulting duplication which doubles the expenses of distribution while dividing the revenue; but the cost of distributing energy to the customer is always greater than its cost of generation, if we except a few industrial customers . . . For that reason no great reduction in rates for the home in western Washington can be hoped for from the development of Columbia river power . . . The real hope for cheap energy in the home lies in



Money for Expansion Purposes

"A SOMEWHAT *unfavorable factor which the [electric] industry faces is the problem of obtaining new money for expansion purposes through equity financing. A large portion of the new money which has recently been obtained for this purpose has been financed through the sale of bonds. If this type of financing is continually resorted to, it will obviously hurt the position of the present bondholders.*"

the lowering of costs of distribution by the elimination of all duplication and competitive expense, and in the building up of the uses of electricity so that each customer will consume vastly more energy than he does at present.

PERHAPS eventually municipal electric power and light systems will become more numerous. This is a point which is hard to determine but it is only reasonable to assume that if such is the case, it will occur largely through purchase of the existing systems rather than through competition, and as long as a bond is backed by sound property value the investor will be favorably treated. The recent sale of the Tennessee Public Service Company's properties seems to substantiate this point.

Besides the threat of government competition, the industry faces pressure for lower rates. This undoubtedly will be stimulated in some parts of the country by the low resale rates established by government power projects. Certain companies are vulnerable to such action, and justifiably should have their rates reduced, but the industry as a whole is probably not earning very much more than a reasonable return on a sound value of its property. The year 1932 is the latest period for which there is available both a consolidated income statement and balance sheet as reported to the U. S. Census Bureau for the commercial electric power and light industry. In that year the rate of return being earned on the property account with an estimated adjustment for current assets and depreciation was 6.4 per cent.

The exclusion of all of the write-ups applicable to electric power and light operating companies which the Federal Trade Commission revealed, would only raise the rate of return to 6.8 per cent. However, if a valuation for the properties is based on the rule-of-thumb figure of $5 of property per dollar of 1932 gross revenues and an estimated allowance is made for work-

ing capital, the rate of return would be somewhat higher or about 7.5 per cent. This latter rough estimate of a rate base is about 15 per cent lower than is obtained by using the stated book value, and it would seem to give reasonably conservative results since gross revenues in 1932 were roughly 17 per cent lower than they were last year, and electric power and light companies have added some property to their rate bases in the last eight years.

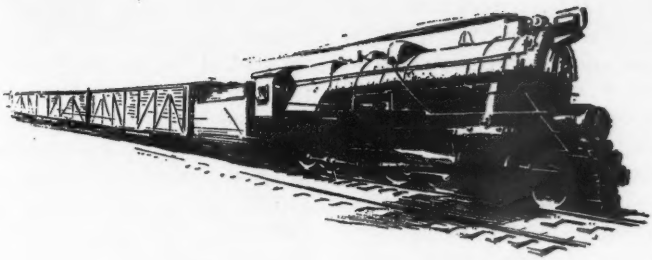
THE current operating profits for the industry as a whole also are not appreciably different than they were in 1932. Considering the vast problem which the question of valuation presents, these figures are, of course, superficial to say the least, although they are of some interest. In any circumstances, rate reductions which can be upheld in the courts should not, in the majority of cases, be sufficient to seriously jeopardize the position of the bonds of reasonably conservatively capitalized companies, as long as the industry continues to exhibit an upward trend in output, whether the valuation of property is based on the method now followed by the courts or on the currently discussed "prudent investment theory."

A somewhat unfavorable factor which the industry faces is the problem of obtaining new money for expansion purposes through equity financing. A large portion of the new money which has recently been obtained for this purpose has been financed through the sale of bonds. If this type of financing is continually resorted to, it will obviously hurt the position of the present bondholders. However, this is not of immediate serious concern, and considerable saving in interest charges is now being made through refunding old debt at very low interest rates. Perhaps the most dangerous threat which the bondholders must watch is one of a substantial increase in costs if eventually the country is more or less forced into inflation. Under such circumstances it is doubtful whether an investor can place very much hope in obtaining sufficient rate increases to alleviate the situation. Inflation, however, will probably take some time to occur and because of the broad earnings base, bondholders of electric power and light companies will individually at least have some time to act.

Uses and Abuses of the Corporation

"A BIG *corporation is a potent instrument in the hands of a stupid man to carry into effect a price policy which may stunt its growth or lead to its actual death. It is in the hands of one who understands the laws of economic growth, an equally powerful instrument for carrying out a price program which will stimulate and develop the market, lead to capacity operations, and thereby contribute to that general prosperity on which the given business itself will feed in the future.*"

—EXCERPT *from "Industrial Price Policies and Economic Progress." By Dr. Edwin G. Nourse and Dr. Horace B. Drury.*



The Railroad Crisis

PART II. *Congressional Policy*

Having analyzed the causes of the predicament of the rail carriers in the previous article, the author now discusses what, in his opinion, Congress could do to relieve the railroads by long-term transportation legislation. Labor and other problems.

BY HAROLD D. KOONTZ

IN a previous article the writer has attempted to analyze the present railroad crisis and indicate some possible ways out. In making this analysis the importance of sound legislative policy toward the railroads was continually emphasized. Indeed, the railroad problem is so much a political problem, as well as an economic one, that its eventual solution may depend upon the attitude Federal and state legislatures take toward it.

The Federal government has steadily increased its regulatory hold on the railroads since the Interstate Commerce Act of 1887, so that today there are relatively few aspects of railroad management that are not subject to government domination.

In contrast to the detailed regulation of railroads, laws affecting their competitors have not been as complete or as well enforced. Until 1935 the Federal government did not regulate interstate highway transportation. Many of the states regulated these carriers, but the regulation was not only incomplete, particularly for contract and private carriers, but lacked uniformity between states. Even the new Federal act is designed mainly to regulate common carriers, with only slight control over contract carriers and practically no regulation of private carriers. Interstate pipe lines have been under the control of the Interstate Commerce Commission since 1906. Regulation of these carriers has been perfunctory and unimportant, the commission having done little more than require annual reports, uniform accounting, and filing and publication of rates.

Water carriers have also been rather laxly regulated. Outside of safety regulations, rail-water rates and routes, monopolistic practices in foreign and intercoastal shipping, and a meaningless rate power for these carriers, little regulation has been attempted. Air lines are likewise little regulated except

for matters of safety. Additional regulation under a Civil Aeronautics Authority has recently been supplied by the Lea-McCarran Act, passed in the last Congress. Under it, interstate air transportation companies are required to obtain certificates of convenience and necessity, maintain certain wages and other working conditions, provide necessary and adequate air-mail facilities, and submit to regulation of consolidations, mergers, and interlocking relationships.

REFERENCE should also be made to aids being given to competitors of the railroads. To be sure, the railroads have received subsidies in the past and many of the loans made to them in recent years may turn out to be subsidies. But at best the subsidies made to railways in the past are not more than 4 per cent of the investment in Class I railways, as compared to a subsidy estimated to be at least 85 per cent of investment in case of waterways.[1] Convincing data are lacking on aids to highway transport. While tremendous sums have been spent by both state and Federal governments on highway facilities, particularly in recent years, no accurate data are available as to what proportion, if any, is in excess of contributions made by users of the highway. One economist, however, estimates subsidies for motor vehicle operations on highways at nearly $600,000,000 in 1932.[2] Large subsidies have been made to air carriers. Air-mail payments in excess of postal revenues were nearly $14,000,000 in 1932, or 70 per cent of the payments made for air-mail service.[3] Annual appropriations for weather and other navigation services given by the government to the aviation industry also approximate $10,000,000, and the Secretary of Commerce reported in 1936 that the Works Progress Administration spent $55,000,000 on airports and terminal projects.

Subsidies for these carriers are recurring annually in contrast to those granted long ago to the railroads, unless, of course, one includes some railroad loans as subsidies. While grade crossing elimination has gone forward rapidly under the stimulus of Federal and state funds, these expenditures have usually been shared in by the railroads, at least to an extent equivalent to the benefit gained by the rail carriers.

Government Railroad Policy in the Depression

THE government has taken some steps during the depression designed for the relief of the railroads. These steps, both legislative and administrative, may be summarized under the following heads: lending funds, encouraging coördination, facilitating reorganization, and setting depression freight rates and passenger fares. An important part of the depression legislation was the Railroad Labor Act of 1934 and the Railroad Retirement Act. While these laws might be, in a sense, to relieve the railroads through helping improve labor conditions, it does not seem to this writer that they can be classed as relief measures.

One of the first measures for relief

[1] Moulton, H. G., and others, *The American Transportation Problem* (Washington: Brookings Institution, 1933), p. 468. Subsidies to railroads from all sources have been calculated at about $1,000,000,000.

[2] Duncan, C. S., *A National Transportation Policy* (New York: D. Appleton-Century, 1936), p. 113.

[3] Moulton, H. G., and others, *op. cit.*, p. 739.

was provision of loans by the Reconstruction Finance Corporation. Set up in 1932, the corporation was empowered to make loans to the railroads when certified by the Interstate Commerce Commission, and when, in the opinion of the board of directors of the RFC, railroads cannot obtain funds on reasonable terms through regular channels and such loans will be adequately secured by acceptable collateral. Except for loans to railroad receivers and trustees, the Interstate Commerce Commission must certify that the railroad, "on the basis of present and prospective earnings, may reasonably be expected to meet its fixed charges without reduction thereof through judicial reorganization." Funds have also been loaned to the railroads through the Public Works Administration on a short-term basis for equipment and maintenance work.

As of December 31, 1937, the status of government loans to the railroads, with repayments and sales of collateral to the public, was as follows:[4]

Total loans (RFC and PWA)	$738,101,000
Repaid by railways	225,588,000
Balance, December 31, 1937	$512,513,000
Of which there had been sold to the public, at a net profit of $4,703,000	$106,497,000
Still held by government	$406,016,000

[4] Bureau of Railway Economics, American Association of Railroads, *A Review of Railway Operations in 1937*, p. 15.

Encouragement to coördination and the elimination of competitive wastes, as well as other matters looking toward increasing railroad efficiency, were the aims of the temporary portion of the Emergency Railroad Act of 1933. The Federal Coördinator of Transportation and his able staff made many searching studies and offered many recommendations.

While the Coördinator of Transportation was technically empowered by statute to force the railroads to accept his coördination recommendations, he did not issue any orders compelling carriers to do so. Several factors may account for this. Because the Coördinator's office was established on a temporary basis and was brought to an end so soon, it was probably not wise to issue an order which could not be followed with continuing supervision. Furthermore, there may have been some doubts as to the constitutionality of compelling coördination provisions. Again, § 7 of the act of 1933, which provided that no coördination should be ordered which should reduce railroad employment, furnished a stumbling block which made it almost im-

¶ "MANY *suggestions have been made for relief of the railroads through legislative action. In order to resolve the variety of suggestions into a program which could be presented to Congress, the President of the United States asked three members of the Interstate Commerce Commission to draw up recommendations for treatment of the railroad crisis. The committee's recommendations were summarized in two parts, one including means of immediate relief and the other a long-term program for the railroads.*"

possible to issue orders for the elimination of competitive waste.

BELIEVING that ordinary equity receivership proceedings were unfair to many railroad investors as well as too expensive and too slow, one of the main railroad policies of the government in the depression has been to facilitate railroad reorganization. Speed in reorganization was to be given by requiring a tentative plan to be filed within six months of the insolvency plea, by reducing the number of protective committees to those approved by the Interstate Commerce Commission, by the proviso that agreement by two-thirds of the creditors of each class and approval by the Interstate Commerce Commission, and the court would make the plan effective by the provision that the commission may write a reorganization plan of its own if the railroad's plan is unsatisfactory, and by the fact that, under certain conditions, the court may ratify a plan if it finds the plan fair and equitable, whether approved by the requisite two-thirds or not. Investors are to be protected by entrusting certain matters to the commission. These include ratification by the commission of trustees appointed by the court, fixing of maximum limits of compensation for trustees and counsel, commission control over intervening parties and their compensation, and commission analysis, criticism, and approval of the reorganization plan itself.[5]

[5] For a more complete discussion of § 77, see Rhyne, C. S., "Work of the Interstate Commerce Commission in Railroad Reorganization Proceedings," 5 *George Washington Law Review*, 749 (1937) and Craven and Fuller, "The 1935 Amendments of the Railroad Bankruptcy Law," 49 *Harvard Law Review*, 1354 (1935).

EVEN though the results of the new reorganization measures passed in 1933 and 1935 have not been noteworthy in terms of reorganized railroads, the advantages of procedure under § 77 over old equity procedure are pretty generally admitted. As already noted, slowness in railroad reorganization is largely due to business conditions. However, a few amendments might well be made to the present law. These will be dealt with presently.

The policy in regard to railroad rates has been, in the main, an administrative matter under the Interstate Commerce Commission. The Emergency Transportation Act of 1933 did introduce a somewhat new rate policy by changing the rule of rate making which the commission was to follow. Prior to 1933, the commission was directed to fix rates so that the railroads "as a whole" might "under honest, efficient, and economical management . . . earn an aggregate annual net operating income equal, as nearly as may be, to a fair return upon the aggregate value of railway property . . . held for and used in the service of transportation." The 1933 act changed the rule of rate making, largely by omitting reference to fair return on fair value, and substituting the direction that the commission should pay attention to the effect of rates on movement of traffic, and to the need for adequate and efficient transportation service at lowest cost consistent with providing such service.

THE indefinite character of this "rule" apparently adjures the commission to do what it can about railroad rates. In several rate cases since, some interesting principles have been followed by the commission. In

First Measures for Relief

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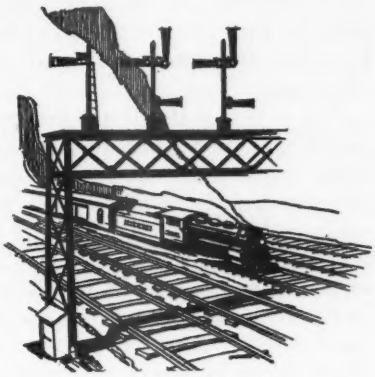

1936, the commission went farther into the field of management than ever before when it made a novel rate decision respecting passenger fares. Although evidence was abundant that the passenger business was, on the whole, not profitable, the commission found the regular passenger fare structure and the Pullman surcharge unreasonable in violation of the law and ordered lower fares and abandonment of the Pullman surcharge. The basis of this decision was that drastic measures had to be taken to regain lost passenger traffic and that experimental fares in the West and South had shown reductions to result in increased passenger revenue.

While it is a moot question whether net income from passenger service, especially for eastern railroads, was increased by the reduction, beyond what would have been received under the old rates or under rates higher than those ordered by the commission, the decision does represent an unusual excursion into the field of management. On rehearing the case for passenger fares for eastern railroads, the commission, early last July, retreated somewhat from its position in the 1936 case by allowing eastern railroads to increase coach fares slightly.

DUE to increasing costs, the railroads have argued for higher freight rates from time to time. Freight rate increases were granted by the commission in decisions in 1937 and 1938. These increases were granted after the commission had allowed the emergency charges given in 1931 to expire in 1933 and the increases of 1935 to expire in 1936. The increases of 1937 and 1938 were estimated, on the basis of 1936 volume of traffic, to add $260,000,000 to freight revenues. Since the volume of traffic in 1938 has been materially lower than in 1936, this estimate is undoubtedly too high. The railroads had asked for greater increases than those granted, but the commission apparently felt that a larger increase would divert traffic from the

rails and would place an undue and unreasonable burden on certain groups of commodities, especially in those industries, such as agriculture and lumber, which the commission regarded as "distressed."[6]

It is significant that five of the eleven members of the commission felt that in some respects the increases granted were inadequate to provide the railroads with the "living" necessary for a sound transportation system. The railroads, as in previous freight rate cases, were disappointed with the rate relief granted. But, as in the past, they have made no move to appeal their case to the courts.

Suggestions for Government Relief

MANY suggestions have been made for relief of the railroads through legislative action. In order to resolve the variety of suggestions into a program which could be presented to Congress, the President of the United States asked three members of the Interstate Commerce Commission to draw up recommendations for treatment of the railroad crisis.[7] The committee's recommendations were summarized in two parts, one including means of immediate relief and the other a long-term program for the railroads. For immediate relief, the committee recommended: (1) Loan of $300,000,000 in government funds for purchase of railroad rolling stock; (2) liberalization of the loan provisions of the Reconstruction Finance Corporation for twelve months, so that loans could be made on reasonable assurance of repayment, rather than on expectation that the railroad pay its fixed charges "without reduction thereof through judicial reorganization"; (3) use of government credit to encourage reorganization; (4) elimination of land grant reductions on government traffic; (5) improvement of bankruptcy procedure under § 77 through, perhaps, the establishment of one court to have charge of railroad reorganization.

THE long-term program provided for creation of a Transportation Authority on a temporary basis. This board of three members was to plan, encourage, and promote action by railroad companies for the elimination of competitive wastes. To aid this program, broadening of the power of the Interstate Commerce Commission was suggested, whereby "coördinations" might be required, greater control over pooling and division of railroad earnings effected, the present restrictive "consolidation plan" eliminated, and unifications of any kind "in the public interest" allowed. The authority would also investigate the relative economic advantages of various kinds of carriers, encourage "joint and coöperative use . . . with a view to abating wasteful and destructive competition," and report upon the extent and changes desirable in using government funds to support transport services. Another recommendation had to do with the adoption of remedial legislation to protect railroads from such "financial abuses" as the pending investigation of railroad finances by the Senate Com-

[6] See Fifteen Percent Case (1938) 226 Inters. Com. Rep. 41, and General Commodity Rate Increases (1937) 223 Inters. Com. Rep. 657, 727ff.

[7] These recommendations, made by Commissioners W. M. W. Splawn, J. B. Eastman, and C. D. Mahaffie, and on the whole approved by the entire commission, were published, along with criticisms of various individuals, as *Immediate Relief to Railroads*, House Doc. No. 583, 75th Cong., 3rd Sess. (1938).

mittee on Interstate Commerce might disclose. The committee also emphasized "the desirability of subjecting all important forms of transportation to equal and impartial regulation by a single agency of the government."

Attention was called by the committee to the fact that reduction of railroad wages and salaries "would be a means of very definite and positive relief to the carriers." However, no specific recommendations for action were made, because the group felt that, in the absence of hearings by management and men and due to legal provisions of the Railway Labor Act, expression of opinion would not be "justified."

In transmitting this report to Congress, the President made no specific recommendations for legislation. However, he did express opposition to granting subsidies for payment of interest and to government ownership and operation, paths not suggested by the special committee. The President also called attention to the fact that some aspect of transportation is dealt with by seven different government agencies and that "it would seem to be a part of common sense" to concentrate all executive functions in one governmental department and all quasi judicial or quasi legislative functions in one commission.

For a time after the committee's report was presented to Congress, legislation was pressed to liberalize RFC loan provisions, to eliminate land grant rates, and to loan funds for the purchase of equipment. The President did not push a program of railroad relief, and all these measures were shelved in the closing days of the session, when the railroads signified their intention to reduce wages. At the command of railroad labor, these and other measures designed to help the railroads were dropped, so that in the last session of Congress nothing was done for the railroads.

What Could Congress Do to Relieve the Railroads?

Any government program toward the railroads and other forms of transport seems to fall under one of three possible classifications: (1) modified *laissez faire,* (2) fairly complete though coördinated government regulation and promotion, or (3) government ownership and operation. In the first type of program, one recognizes that the transportation business is fundamentally competitive, and competition, subject to only a few rules, will work to the advantage of the investor and consumer. If the second type of program were adopted, there seems to be a recognition that competition cannot be relied upon to protect the public and that a regulated monopoly policy must be pursued. Whether there are

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many transportation companies operating in varying fields or not, the purpose of this kind of regulation would be to control and coördinate their activities as though they were monopolies, in addition, perhaps, to promoting monopolies. A third kind of policy, government ownership and operation, implies that, because of importance, size, or peculiar operating problems, the public interest in transportation can only be protected efficiently and adequately through placing full ownership and control in the hands of government.

As any student of regulation knows, our past and present government transport policy has been none of the three basic types. Instead, it has left some transport agencies virtually unregulated, has strictly regulated others, has aided some through liberal subsidies and has imposed financial burdens on others, has entered into government ownership in some fields and insisted on private ownership elsewhere, and has compelled competition while imposing regulations designed for monopoly.

PUBLIC opinion apparently will not allow a return to modified *laissez faire* or approve complete government ownership. Perhaps neither policy would be in the best interests of society. Be that as it may, the policy left open is coördinated, equal, and effective transport regulation. It is with the furtherance of this basic principle that the writer makes the following suggestions for a congressional program to aid the railroads:

In the first place, a change in regulatory rate policy is needed. The rate powers of the Interstate Commerce Commission should be somewhat relaxed and defined so that more responsibility for adequate rates can be placed on the carriers, rather than on government. This is not to make a retreat from effective regulation, but is simply to recognize that private property has some prerogatives. No particular harm can be done by repeal of the long-and-short-haul clause as proposed in the Pettengill Bill. All that the repeal would mean is that the railroads could file tariffs for low long-haul rates without first asking the commission's permission to do so, or making similar decreases in noncompetitive short-haul rates. This would place long-haul rate making on the same basis as other rates and subject to the same restrictions respecting place discrimination.

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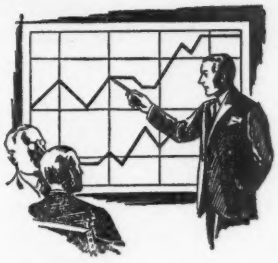
For over two decades, in the opinion of the writer, the commission has not allowed adequate freight rates to be levied, particularly when they could have been collected. Even at the present time, it seems indefensible to disallow the full rate increases asked for by the railroads on the grounds that such increases as granted were adequate, or that traffic would be diverted by further increases.

If the railroads are not earning the return to which they are legally entitled, the least the commission can do is to



Change in Regulatory Rate Policy

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grant increases asked for by the railroads, barring, of course, unreasonable discriminations which might result. To do otherwise is to take over management of the railroads. After all, commission action on increases is only permissive, and if rates cannot be collected, should we not rely on the normal profit motive of free enterprise to make adjustments to the most profitable level?

To accomplish this sort of rate policy, Congress should enact a rule of rate making which would say simply that the railroads are entitled to rates to cover reasonable operating expenses and a fair return on the fair value of railroad property, that the action of the commission is permissive, and that the commission shall only refuse to grant increases when the rates are excessive (judged by the expense plus fair return basis) or unduly discriminating against persons or places. In this connection it may be necessary for Congress to compel the railroads to adopt a system of cost finding to furnish cost evidence on particular rates. It is believed that, through eliminating many unnecessary statistical and accounting operations now required, cost finding can be introduced with little additional expense.[8]

Congress might also repeal the law giving the government special rates on land grant roads. The government has realized well on its original grants of land and these special rates should be canceled. This is a minor matter, however, estimates of increased revenue resulting amounting only to $7,000,000 annually.

[8] An able report on cost finding has been made by the staff of the former Coördinator of Transportation, "Cost Finding in Railroad Freight Service," published in June, 1936. For comment on the plan see the writer's article, "Cost Finding for Railroads," 54 *Journal of Accountancy*, p. 284 (October, 1937).

A SECOND change of basic law could be made profitably respecting combinations. It is high time to eliminate from the law requirements for competition between the railroads, or, for that matter, between railroads and other carriers. This writer believes that, if a system of regulation with private ownership is to be maintained, regulation designed for monopolies should be accompanied by encouragement to monopoly.

Congress should announce as a statement of public policy that it favors monopoly in the commercial transportation field. The legal requirement that combinations should preserve competition is unnecessary and unwise. Outright encouragement should be given to combination by pools, traffic agreements, consolidations, or combinations in other forms, not in accordance with a preconceived and rigid plan, but subject merely to the provision that the Interstate Commerce Commission certify the combination to be in the public interest. Restrictions now placed on railroad ownership of other forms of transport, such as water carriers, should be eliminated. In order that consolidations and other coördinations should proceed without unnecessary obstruction, the present dismissal compensation agreement should be abolished and Congress should make provision for curtailment of railroad employment from general funds, if special treatment is to be granted to railroad labor.

A GOVERNMENTAL agency to study and advise railroads on elimination of competitive waste might be established. The office of the former Coördinator of Transportation might well be recreated, without the labor provision of the old law and without the power to compel coördinations. This agency could be empowered to act as a kind of "broker" between railroads desiring to combine, so that combination agreements from pooling arrangements to outright mergers might be effected more expeditiously.

Note that what is suggested is not to let combinations run wild, but to encourage combinations, subject to commission approval, in whatever form may seem to be in the public interest. These combinations should be encouraged not only to reduce wasteful competitive expenditures, but to start on the way to a more unified national transportation system. It is proposed to leave these combinations on a voluntary basis. In case encouragement fails, compulsory combination may be the next most desirable step.

A THIRD field for congressional action, although one that the present Congress may approach with hesitation, is in the realm of labor legislation. What is needed is a railroad labor law which recognizes that railroad labor is as much dedicated to the public service as railroad capital. Strikes in the railroad business should be outlawed as being opposed to safe and uninterrupted interstate commerce. Disputes which cannot be settled by negotiation should be subject to compulsory arbitration. This arbitration should be handled by a completely nonpartisan board, or even a division of the Interstate Commerce Commission. Consistency in regulation would seem to require that all aspects of railroad regulation, including labor, be placed under the same commission. The labor

disputes board might be separate from the commission, but for the sake of unity in regulation, appeal to the commission should at least be granted. If necessary to force compliance with decisions of a disputes board, railroad labor unions, particularly because of the quasi public position of railroad labor, should be incorporated.

As it is now, one board has jurisdiction over disputes arising from working agreements, and wage disputes are handled by a separate board whose reliance for power is in the force of public opinion. Because of the partisan nature of many railroad disputes boards and "neutral" referees in the past, the railroads, rather than risk dealing with the board, have too often granted labor increases in pay and favorable working rules which were hardly justified in the light of all pertinent circumstances.

COMPULSORY arbitration might be a step in the direction of regulation of wages and working rules by a government body. One hesitates to see such matters put in a political sphere when railroad labor has so strongly controlled politicians and exerted undue influence for uneconomic legislation. Political influence is a danger in this kind of, as well as in all, regulation. Nevertheless, an honest attempt should be made to place labor disputes under independent regulatory control, along with other railroad regulation. If this is done, there is some hope that the railroad labor problem will be treated as an integral part of the economic crisis facing the railroads.

In the fourth place, helpful tax legislation might be passed. The burden of taxes on the railroads might be lowered somewhat by a Federal law providing for tax equalization and reduction of unreasonable taxes. To be sure, most of the burdensome taxes are placed on railroad property by the states and their subdivisions. Under its power to remove restrictions on interstate commerce, it would probably be constitutional for the Federal government to see that unduly oppressive or unequal taxes are adjusted. Since most of the state taxes on railroads are property taxes, perhaps all a Federal board need do would be to check on assessments made of railroad property and use the influence of the Federal government to bring about reasonable and equal assessments.

IN recent years the railroad tax problem has been complicated by new Federal taxes. The railroads pay a higher tax for railroad pensions than

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is required from other industries under the Social Security Act. This inequality should clearly be removed by revising the Railroad Retirement Act to provide for taxes equal to other retirement insurance taxes. In this connection, taxes on account of unemployment insurance should be kept to the level exacted by the states, in case a special unemployment insurance act is passed for the railroads, as seems likely. To select the railroad industry as one to tax more heavily for retirement and unemployment insurance is not only unsound tax policy but unsound social security policy as well.

Furthermore, instead of a surtax on undistributed earnings of railroads, the corporation income tax should be designed so as to encourage accrual of reserves. One of the hopes of future railroad stability lies in reducing indebtedness. This can be done, if and when a measure of business recovery occurs, by a sound reserve policy. A tax policy which punishes those who would accrue reserves is unsound for industry in general and bears particularly hard upon the railroads.

As a fifth part of a legislative program, additional laws respecting financial reorganization are needed. The present § 77 could profitably be restated so that the rights of equity and debt security holders would be understood better. A special reorganization court of legal experts might well facilitate reorganization proceedings and insure more intelligent handling of plans. Since the Interstate Commerce Commission is granted the power to approve plans of reorganization before a court may act on them, Congress might well ask the commission to state basic principles upon which these plans should proceed. Section 77 should also be tied in with regulation concerning combinations. Often an advantageous time for effecting consolidation is during reorganization proceedings.

In the sixth place, the time is ripe for decision as to government policy with respect to aid to transport agencies. On the whole, the government should aid only those industries which are needed for national defense or peculiarly for the public welfare, and which could not develop without government subsidy. Encouragement to aviation and the development of some waterways, especially near the coasts or borders as substitute agencies of transportation, may be necessary in the interests of national defense. A limited amount of government aid might be justified for those transport agencies which are in the experimental stage and which might become economically sound and serviceable to the public. In some respects our policy of aid has developed along these lines. But millions of dollars have been spent for waterways which show no prospect of ever paying their way and which are not necessary for transportation service.

No accurate survey has been made, except in isolated instances, to show to what extent both Federal and state governments are subsidizing commercial motor vehicles. Yet millions of dollars are being spent to make through highways, largely for the benefit of commercial transport. No one knows whether or not subsidies being made to aviation are unwarranted grants to commercial transport or justifiable subsidies for experimentation and national defense.

Railroad Tax Problem

"In recent years the railroad tax problem has been complicated by new Federal taxes. The railroads pay a higher tax for railroad pensions than is required from other industries under the Social Security Act. This inequality should clearly be removed by revising the Railroad Retirement Act to provide for taxes equal to other retirement insurance taxes. . . . To select the railroad industry as one to tax more heavily for retirement and unemployment insurance is not only unsound tax policy but unsound social security policy as well."

As a seventh part of a legislative program, equal and adequate regulation of transport agencies competing with the railroads is required. Federal regulation of motor vehicle transportation has been undertaken recently. But even this new law is in need of repair if a plan of transport regulation is to be developed. Contract and private carriers are still too inadequately regulated. Intrastate motor vehicle operation is explicitly placed beyond Federal regulation by the law. Although this may not be unwise in the light of the administrative problem of dealing with so many transport units, a unified plan of regulation can hardly be evolved on this basis. In the field of railroad regulation the Federal government exerts much influence on intrastate operations which affect interstate commerce. This has been held to be constitutional. With the Supreme Court apparently in an expansive mood toward the interstate commerce power, more thorough regulation both of intrastate motor transport and contract and private carriers would probably be legally acceptable.

Another gap in regulation is found in water carriage. What is needed is complete regulation of rates and rate discrimination of all water carriers, as well as provision for requiring certificates of convenience and necessity. As a condition for expenditure of Federal funds and under the interstate commerce power, the government has the power, if it had the will, to enact these controls. Not only might such regulation aid the depressed railroads to collect rates more nearly equal to cost of service, but it would enable the water carriers to recover amounts more nearly equal to their costs.

Even with a change in regulatory and subsidy policy, a real trans-

portation program can hardly be developed without reorganization of those government agencies dealing with transportation. In a recent study on government activities respecting transportation, the Brookings Institution made some valuable suggestions.[9] In general this plan calls for transfer of all regulatory functions concerning transportation to the Interstate Commerce Commission and centralization, either in a newly created Department of Transportation or in a Division of Transportation in the Department of Commerce, of all promotional work being carried on by the Federal government in behalf of transportation. This second classification would also include all direct operations of transportation business by the government.

As the Brookings study indicates, a fundamental clash exists in present Federal regulatory and promotional policies. Laws respecting regulation impose a responsibility on the regulatory agency to develop adequate and efficient, though coördinated transportation. In promotional efforts, emphasis is placed "upon the development of individual forms of transportation rather than upon a unified system of transportation."

REORGANIZATION of government transport agencies and redefinition of their policies and jurisdiction could put us on the way toward a real transportation policy. It is probably well to leave the Interstate Commerce Commission as a quasi judicial body, give it control of regulation of all transportation, including some sort of supervision over labor. Research agencies looking toward coördination of transportation, as well as research and promotional agencies supervising government aid, should be placed in a department of the executive branch of government.

There are a few things which a legislative program should not include. Sheer make-work bills, like the train-limit bill, are not a part of a constructive and statesmanlike program. "Fishing expeditions" by congressional committees, in which railroad management is unnecessarily persecuted for mistakes of judgment, certainly do not increase the desirability of the railroad field as a place for investment. A Federal lending program, as the sole solution of the railroad program, is futile. It is an easy matter to put off the evil day and simulate prosperity by a liberal lending policy. Since loans beget more loans, realities must be faced sooner or later. As a temporary expedient, and that alone, government loans may be justifiable. Where they are used to delay needed readjustments, they are to be deplored.

THIS writer is impatient with emergency proposals. Laws to meet emergencies are likely to assume too permanent a form. Fairly vigorous legislative overhauling is called for. Transportation laws have been developed piecemeal and little attempt has been made to reorganize them and the agencies charged with their administration. A sound plan of transportation regulation and aid is needed. Certain paths for future transportation policy are clearly defined. All that is required is the capacity to study these paths and the courage and statesmanship to begin work.

[9] See *Investigation of Executive Agencies of Government*, part 12, Report by Brookings Institution to Select Committee of U. S. Senate, 75th Cong., 1st Sess. (1937).

THE RAILROAD CRISIS

The railroads must look to the government for some action in developing long-term transportation legislation. To date, Congress has done little to solve the problem, and if the same indolent and political spirit continues to prevail, the government may be forced to take over the railroad industry. This would seem to be a step toward government ownership of other transport agencies.

Such a prospect of government ownership should make the voting taxpayer and consumer pause.

Telephone Pests I Have Known

BY HERB LITTLE

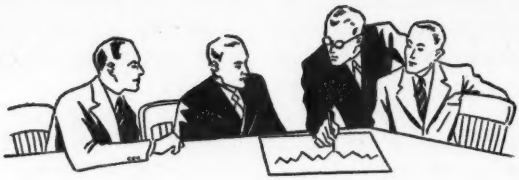
THE *following clinical histories are taken from real life. Any similarity to living persons or actual events is purely intentional. This may mean you!*

CASE No. 1. The Cheerful Little Earful. This is the gushy young soprano who jars the transmitter out of your hand with her piercingly sweet greeting. Nine out of ten times it happens on the Morning After when you feel perfectly lousy. As you fumble with the dial to call your lawyer about getting you out of that jam you got into last night, you are in a pensive mood, if not actually asleep. Suddenly a whistle goes off in your ear: "Good Morning! Law offices of Blotzhiemer, Offerdinger, Stoopnagle, and Budd! Go-o-o-o-d morning!" This usually stuns you, thereby exposing you to two encores before you have the presence of mind to throw the telephone into the wastebasket. Nobody has any right to be *that* cheerful so early in the morning.

CASE No. 2. Offside Kelly. This is the daffy dope who simply won't be convinced that he has the wrong number. You can try patience, pity, or profanity in an effort to convince this idiot that your home is ***not*** the Peggy Ann Itty Bitty Giftie Shoppe. It's no use. He's right back at you in two minutes and usually sore as a boil at you for being whoever you are wherever you are. The only thing you can do is run out of the house immediately and hide in the Elks' Club for the rest of the day.

CASE No. 3. The Worthy Cause. It always happens when your business is so quiet that you can sit at your desk and hear the notes drawing interest. Just as you are about to give up and join the Townsend movement, the phone rings. A customer, a client? It turns out to be either Major Abelard Thistledown or Mrs. Uttermost-Farthing of Eatingham-on-Rye. You are enraptured with the prospect! You turn yourself inside-out with cordiality! The pay-off comes when you are asked to take two tickets to the Third Ward Young People's Clambake at two bucks a copy. Just say the word, and they'll be sent right over. (How dare you use such language to a lady, you cur, sir!)

CASE No. 4. The Forgotten Man. You must talk to Mr. Beeswax immediately. It's urgent. What? He's busy on another line? You'll wait. You do. The line goes dead. After an eternity you sneak a sly wiggle on the hook. Then you bounce it violently. You holler into the phone. You scream. You jump up and down. The neighbors are hanging out of the window. A squad car pulls up. It's no good. The telephone company operator finally disconnects you with kindly pity. Call from another station and the same thing happens. Better forget about it and run out to the golf course. You'll probably meet Beeswax out there.



Government Ownership Strategy in Wisconsin

The aim of a powerful minority is, in the opinion of the author, to create discord between the private utility companies and the public so as to drive the private companies from the field. Duty of private enterprise to state and restate its case.

By FRANK A. ZUFELT

THE private electric industry of Wisconsin is handicapped at present by a vigorous movement to foster unfriendly public relations. It is part of the strategy of the government ownership group to create a sentiment so hostile that it will drive the private companies from the field. So the industry is being attacked by a powerful minority which has succeeded in creating a considerable discord between the private companies and the public. The restoration of friendly public relations on which the industry depends for existence is, in the judgment of the writer, the dominant problem now confronting it.

Neither the industry nor the public seems to realize the gravity of the situation. The crusading spirit of the government ownership advocates may be appreciated from the fact that the head of an engineering company doing a large amount of municipal work in Wisconsin recently asked with apparent seriousness if there was actually one favorable thing that could be said about the private ownership of an electric utility. He refused to take public statistics in Wisconsin definitely favorable to the private industry seriously. He had been fully convinced by municipal ownership propaganda that the private utilities had not a leg to stand on. He agreed, however, that if private ownership has a case it ought to be stated.

That the private utility industry ought to state its case is, however, not the general attitude of the government ownership minority in Wisconsin as is evidenced from the attempt in 1935 in the Wisconsin legislature to silence the private industry, while similar restrictions were not directed at public ownership.

Some attention has, of course, been directed to the importance of offsetting the hostile propaganda of government ownership advocates and to the value of the creation of friendly public relations between the private utilities and

the public. Among the awards by the Edison Electric Institute in 1937 was a donation of $250 by B. C. Forbes, editor of *Forbes* magazine, for the most meritorious paper dealing with "public relations in the electric light and power industry." The award was limited, however, to employees of the industry. Something might be gained, it would seem, by sounding out the opinions of outsiders on this important problem. My own view as an outsider is that all the electric industry in Wisconsin needs to do to offset the hostile propaganda against it is to state its case fully and frankly. This is not merely an offhand opinion. My conclusions are based on an examination of the Wisconsin records of the operation of public and municipal plants — the latter being held up as models to be copied in other states—and conversations with citizens in all walks of life. From the information so gained and from various contacts, I am convinced that the attitude of the public, so far as it is unfriendly toward the private industry, is solely due to ignorance of the facts relating to municipal and private operation. The public has not had an adequate opportunity of considering both sides of the story.

THE views of the political opponents of the private companies are constantly paraded before the public. By clever maneuvering and propaganda they are making the public want what the political agitators want the public to have; that is, public ownership of the electric industry. The leaders of the industry appear to look upon this with indifference. It seems to be regarded as of minor importance — merely as the "usual socialistic tirade against the industry." But this attitude of indifference is, in my opinion, merely playing into the hands of the public ownership politicians.

By silence in the face of attacks a deep-seated impression is being created in the public mind that there must be something wrong with the industry and its management. On this lopsided set-up the industry is being indicted and public opinion marshaled against it.

Clearly the electric industry is being taken for a ride. So far has this gone that anyone who upheld the private industry before the legislature recently was questioned almost as if he were a criminal.

Consider the extent of the interest involved. Here we have a great Wisconsin industry in which 250,000 security holders, 847,215 owners of savings accounts, and 2,022,511 insurance policy holders are vitally concerned. These interests touch almost every home in the state. Is it not the duty of the managers of the electric industries as trustees for this large part of the public directly interested in the prosperity of the electric companies to do everything in their power to protect their companies from the growing virulence of the political attacks which, through silence or inaction of the managers, may destroy the industry? How else are friendly public relations to be retained? How are the people to know where to cast their lot if only one side of the question is presented and if they are kept in ignorance of the facts? Why do the government ownership proponents oppose—as they do—the dissemination of the facts about the private electric industry if they have nothing to fear?

Indifference to Political Agitators

"THE views of the political opponents of the private companies are constantly paraded before the public. By clever maneuvering and propaganda they are making the public want what the political agitators want the public to have; that is, public ownership of the electric industry. The leaders of the industry appear to look upon this with indifference. It seems to be regarded as of minor importance —merely as the 'usual socialistic tirade against the industry.'"

THERE is plenty of opportunity for the private electric industry to retain public favor if its managers will take the pains to present the facts to the public instead of permitting themselves to be silent by cries of "propaganda," or the fear of stirring up controversy.

My own investigation made without any idea of what it would divulge revealed conditions decidedly favorable to the private industry, contrary to the assertions of its political opponents. The records show that the claims of taxless communities with municipal buildings, parks, recreation grounds, etc., paid for from proceeds of municipal electric utilities are as mythical as what Alice saw in Wonderland. Instead of taxless towns served by municipal plants, their taxpayers are not only paying more taxes and higher electric rates but they are getting less for their money than are the taxpayers of towns served by the private industry. Instead of acquiring electric plants that cost "exactly nothing" as averred by the public ownership devotees, citizens, to meet the cost of their municipal ownership ventures, are paying for their plants through the imposition of higher taxes and higher electric rates than are being paid by taxpayers and users of electricity in towns served by the private companies. And at the same time the towns served by the private companies with their lower taxes and lower rates are building their communities into better places in which to live.

These facts are readily available to the managers of the electric companies. Nothing in my judgment would do more to insure the continued support of the public and stop the "production for use" movement than to present and continue to present the facts which the public records reveal as highly favorable to the private industry.

IT is true that when measures detrimental to the private industry are under discussion in the state legislature the leaders of the industry become active. They constitute a vibrant force against the attacks of the industry's opponents. After the biennial sessions are over, however, the utility men lapse into silence and inaction. Not so the municipal ownership minority. The "production for use" advocates never quit.

Take, for example, the recent Wisconsin Development Authority case. On January 11th this act was by a unanimous decision of the Wisconsin Supreme Court declared unconstitutional. On the same day, taking issue with that decision, Andrew J. Biemiller, Milwaukee socialist assemblyman, in a fiery public statement referring to this decision, declared: "To the great mass of the people it is a crushing blow."

Subsequently, on June 21st, the high state court reversed its own decision (5 to 2) and validated the WDA. Still later, however, the people of Wisconsin, themselves, gave the WDA a real, "crushing blow" by electing Julius P. Heil to succeed Governor LaFollette. At least, the present prospects are that nothing further is likely to come of the WDA (or its younger cousin, the Wisconsin Hydro Authority) during the Heil administration at Madison. However, it should be apparent by now that the government ownership promoters are only marking time. Governor LaFollette has already called for renewed Progressivism.

THE utility leaders, not only for the sake of those directly interested in the prosperity of the industry but for the benefit of the general public, should, in the face of persistent attacks, not only state the industry's case but restate it as long as the attacks continue. They should be as active at all times to combat destructive assaults and win popular favor as they are after these attacks have crystallized into proposed detrimental legislation.

The municipal ownership engineer was right. If the private industry has a case, it should state it. Based upon the public records of Wisconsin, it has, in my opinion, a case which it should not be slow to present.

Wall Street and the Forgotten Man

"IN response to the oft-repeated allegation that the financial affairs of railroads are dictated and dominated by that big bad wolf called Wall Street, I know nothing about it. I do know that I have never heard of, and do not know of, any interference by so-called Wall Street bankers, or any other bankers. I do hear frequently and eloquently from our many thousands of men and women stockholders, whom I have learned in recent years to refer to as the forgotten men and women, who have invested their savings in a legitimate enterprise which they thought, and still hope, will be able to make a living."

—ERNEST E. NORRIS,
President, Southern Railway.

Wire and Wireless Communication

TELEPHONE companies operating in rural areas will be especially interested in the report made to the recent convention of the National Association of Railroad and Utilities Commissioners at New Orleans by the Committee on Rural Electrification. This report attracted favorable comment because of the evidence of painstaking research which reflected the activity and interest of the committee's chairman, Ferd Schaaf, who is also chairman of the Washington Department of Public Utilities.

Of interest to the telephone companies is the attention which the report gives to the problem of inductive interference resulting from construction of rural power lines in the vicinity of existing grounded telephone circuits. Because of the expense of rehabilitating these grounded telephone systems so as to eliminate such interference, and because of the reluctance of the Federal REA to allow part of the Federal loans to be expended by the rural coöperatives in compensating telephone companies for alleged interference damage, the issue has become a regulatory problem as well as an engineering one. The committee's report approached it, however, from both angles.

First, there is a tabulation of the results of a questionnaire which the committee sent to various state commissions where the inductive interference situation might be most acute and, secondly, the report contained a paper (Appendix D) by Abner R. Wilson, electrical engineer of the Washington commission, which dealt with the technical aspects of inductive interference with suggestions for eliminating the same.

THE committee's questionnaire contained a number of inquiries on the general subject of rural electrification, but included the following questions regarding inductive interference:

> Have telephone utilities in your state experienced operating troubles because of inductive interference from power lines?
> What has been done to correct it?
> Who paid the cost of material?
> Who paid the cost of labor?
> Has your commission any rules or orders on this subject? If so, please enclose a copy with this report.
> What are your views on this subject?

Discussing the replies to this questionnaire, the report states:

> Replies to items (1) and (2) indicate that the commissions have fairly complete control over private utility operation and construction methods, but only a few of them have even partial control over municipal, coöperative, and REA systems. A majority of the commissions reported telephone systems in their states had experienced operating troubles because of inductive interference from rural electric power circuits. To overcome these difficulties single wire ground circuits have been "metallicized" by the stringing of additional wire, after which electrical susceptiveness to the disturbing fields from the power lines have been balanced out by transpositions. Exposed areas generally have been isolated with repeat coils when only these exposed areas have been metallicized.
>
> Proper use of these coils in a number of cases has also provided additional phantom circuits. The usual corrective procedure

provides that the electric utility furnish the materials necessary and the telephone utility furnish the required labor. About one-third of the replies indicated the commissions had issued rules or orders on the inductive interference problem.

The report goes on to give a state-by-state analysis of the replies on the specific questions dealing with inductive interference, which include replies from the regulatory commissions of Alabama, Connecticut, Indiana, Nebraska, and North Dakota. A state-by-state tabulation of replies to the committee's general questionnaire lists other states as well.

Mr. Wilson's analysis of the problem includes a discussion of proposed congressional legislation which would grant some measure of Federal relief in adjusting the differences between electrification coöperatives and rural telephone companies.

* * * *

INDEPENDENT telephone companies are hoping against hope that the administrator of the Wage-Hour Law will agree with the contention of the U. S. Independent Telephone Association that the small independents whose telephone business is predominantly intrastate should be exempt from operation of the law under a provision (§13(a)(2)) which exempts employees "engaged in retail or service establishment, a greater part of whose selling or service is intrastate commerce." So far the indications of what the administrator may finally do are somewhat conflicting.

Officially the only notice taken by the administrator of the resolution adopted by the recent annual convention of the U. S. Independent Telephone Association (which virtually hinted that the small independents had no intention of complying because of their belief that they were legally exempt from the law) was a request that the association file a brief explaining its position and explaining the effect which compliance with the Wage-Hour Law would have upon the smaller independent telephone companies. After that there will be, presumably, hearings and then the administrator of the Wage-Hour Law will decide.

Meanwhile, the head of the New York State Department of Labor had asked Calvert Magruder, Wage-Hour counsel, for an opinion as to whether a telephone operator in a hotel would be within the exemption of §13(a)(2) of the act applying to employees engaged in retail or service establishments. A New York labor official had observed that hotel telephone operators are very largely engaged in interstate commerce by reason of the many long-distance telephone calls which would ordinarily be handled by any hotel of a size sufficient to employ special telephone operators. The opinion of the general counsel was to the effect that such a hotel telephone operator would fall within the exemption.

SOME small independent telephone executives saw in this a possible hopeful clue. It was pointed out that, by and large, hotel operators handle more interstate telephone calls than an exchange operator in a small local community. On the other hand, there was speculation to the effect that if General Counsel Magruder had wanted to enlarge his interpretation of the statutory exemption to other classes of telephone operators as distinguished from those employed in hotels, he would have taken that opportunity to do so.

And then there was the reference made by Assistant General Counsel Rufus Poole of the Wage-Hour Administration to §13(a)(2) of the Wage-Hour Law in an address given in Syracuse on November 18th. Mr. Poole seemed to think that the term "service establishment" should be strictly construed as referring to small retail or neighborhood establishments which do not employ a large force of workers, such as beauty parlors, hotels, valet shops, and laundries. He said he thought it inconceivable that Congress would have intended this exemption to cover a great mass of employees in various lines of enterprise by mere implication, and suggested that it was more reasonable to suppose that if Congress had such an intent it would have specifically enumerated the various

types of employment to be so exempt, as indeed it had enumerated various other types of employment, such as agricultural occupation exemptions of the act.

At a recent meeting of the Kentucky Independent Telephone Association, Louis Pitcher of Chicago, executive vice president of the U. S. Independent Telephone Association, said enforcement of the new Federal Wage-Hour Law would close more than 6,500 exchanges in the country. He said a survey showed that many exchanges were receiving less than $10,000 a year each in gross income and could not meet competition. Similar views were expressed by Charles Deering, secretary-treasurer of the national association.

* * * *

PUBLIC interest in the FCC radio monopoly investigation has shown signs of flagging after the publicity which attended the opening of the hearings at which David Sarnoff, president of Radio Corporation of America and chairman of the board of NBC, took the stand to voice his views on the desirability of voluntary intra-industrial regulation. Apparently two speeches on the work of the investigation by Chairman McNinch (one broadcast over the networks) have not aroused the nation, if newspaper lineage and attendance at the hearings are any criteria of interest.

However, important things are happening at the investigation. First of all, there is the notice served by Chairman McNinch that the FCC won't allow much more testimony to be put in the record by the broadcasters of a laudatory or "after dinner speech" type. Again, there is developing evidence of some differences between the broadcasting chains and the station owners. Finally, there is the recent decision of the Supreme Court in the "patent pool" case (General Talking Pictures Corp. *v.* Western Electric Company, decided November 21st) which tosses the whole problem of patent monopoly right into the laps of the investigators.

Basically the FCC radio investigation must be divided into three aspects of competitive inquiry:

1. The relationship of the chain broadcasters and the independents or station "affiliates."

2. The relation between radio and non-radio communications agencies.

3. The relation between radio broadcasting and the general public interest.

WITH respect to the first classification, it is not generally realized that there is quite a difference, on the whole, between the interests which own and operate many stations and the network broadcasting chains. To the independent affiliates, the network chains merely furnish a program service, but since the station owners operate them under direct licenses from the FCC, it is obvious that, as a group, they are in a position to suffer from FCC discipline for mistakes made by the networks.

In plainer words, suppose the FCC is so displeased with a certain type of broadcast that it feels discipline is necessary, what can it do by way of discipline except to threaten the restriction of the license for the station from which it was broadcast? Such action is likely to hurt the station owner (who merely takes the network service) more than the network which was responsible for the offense.

Obviously the independent affiliates are in no position to police network programs and probably would not want to take that responsibility if they were given an opportunity to do so. Similar complications run through other popular criticism of radio programs—too much advertising, too much "swing," not enough education, and too many blood curdling bedtime stories.

The general public interest, of course, is concerned with radio broadcasting in all of its aspects. It is as much involved in the intra-industrial problems of broadcasting and station operation as it is with those areas of competition between radio and other forms of communication, such as the press, moving pictures, television, and so forth. However, the latter point brings up the question of patent monopoly and the radio.

The very theory of patent monopoly as

developed in the United States since the ratification of the Constitution is repugnant, in spirit at least, to our theory of free competition in commercial enterprise as developed in the Sherman Act and other antitrust laws.

HOWEVER, the government has managed in a more or less bungling fashion in keeping this legalistic concept from clashing too violently with our alleged national economic ideal. But the recent decision of the Supreme Court in General Talking Pictures Corporation *v.* Western Electric Company brings the whole conflict right out in the open just at a time when the FCC investigating committee is on hand to tackle the problem. The weekly Washington utility letter, *P.U.R. Executive Information Service,* digested the significance of this decision as follows:

> This decision resulted from a suit by a talking picture equipment company which contested the right of the owner of a patent to restrict, by a mere "license notice," the commercial use made of devices manufactured thereunder. (In this case, the device was a vacuum tube amplifier which the Bell System, controlling the patent, attempted to limit to use in amateur radio reception; whereas the contesting company desired to use it in talking picture equipment.)
>
> Last term the Supreme Court upheld the right of the patent owner to control the use by such restriction notice even after sale, but upon the plea of Assistant Attorney General Arnold, and in view of a vigorous dissent by Justice Black, the court agreed to rehear the case this term. This week's decision affirms the former ruling with only Justice Reed joining Justice Black in dissent. The majority opinion by Justice Brandeis was based on the simple premise that the practice of granting restrictive licenses on patent usage is well settled under the law. Arnold had argued that public policy demanded the abolition of all patent restrictions "against the public interest."
>
> The net effect of the decision is likely to result in a stronger commercial position for the Bell System in communications fields other than telephone, and a vindication of its "patent pool" arrangement, which has been the object of some criticism. There is still the likelihood that the FCC (either in its final report on the telephone investigation or possibly through the medium of the present broadcasting monopoly investigation) will attempt to persuade Congress to take specific action to break up the "patent pool." It will be recalled that the Proposed Report on the telephone investigation intimates that the Bell System, through its cross-licensing of patents, has already arrived at a position of economic domination of communication media (radio, talking pictures, etc.) which should be kept competitive.

An analytical editorial on this conflict in philosophy between our Federal patent laws and our Federal antitrust policy was contained in *The New York Times.* Commenting on this decision, it states:

> There will be no doubt in the minds of most lawyers that the Supreme Court was merely following the settled interpretation of the law when it decided the other day that a patentee may restrict the use to which his patent vacuum tube may be put. So long ago as 1852 Chief Justice Taney held that "the franchise which the patent grants consists altogether in the right to exclude every one from making, using, or vending the thing patented without the permission of the patentee." In a famous decision involving the right of a Chicago department store to sell a patented talking machine at less than the price fixed in the license, Judge F. E. Baker of the circuit court of appeals held that "within his domain the patentee is czar." This is undoubtedly the correct principle—correct in the sense that it has been applied over and over again in patent suits. If the decisions of the Supreme Court seem at times to have departed from it, if the patentee has been both permitted and forbidden to fix prices or to limit the manufacture and use of his invention as he pleases, it is because it is not always easy to define the domain over which the owner of the patent reigns. Yet there is no doubt that so long as he makes no attempt to levy tribute outside of his legal monopoly his sway is absolute.
>
> Whether or not social and economic conditions have changed since the Supreme Court indicated the line that must be followed in judging patent causes is another question. There is a conflict in principle between antitrust laws which are intended to foster free competition and patent laws which are designed to encourage invention by restraining trade. To avoid conflict between the two sets of laws, yet permit patentees to enjoy the kind of limited monopoly required to stimulate invention, is difficult. No solution has come out of the many hearings conducted in the last generation by a half-dozen congressional committees. What we need, and what the forthcoming investigation in Washington should give us, is a thorough study which will leave no doubt as to the policy that Congress ought to pursue and which will not expose Supreme Court judges to the temptation of legislating on their own account in an effort to right what they conceive to be economic wrongs.

Financial News and Comment

By OWEN ELY

North American Files Integration Plan

North American Company, controlling a $925,000,000 system which serves principally the four areas adjacent to Cleveland, Milwaukee, St. Louis, and Washington, D. C., has filed a plan of integration with the SEC to conform with § 11 of the Utility Act. Since the plan is tentative, however, full details will not be made public. President Fogarty indicated that, if carried out over a period of years,

> with due regard to the necessity for synchronizing transactions so as to preserve relative values where the disposal of certain properties and acquisition of certain others cannot be effected by direct exchanges, the plan may fairly be calculated to protect the interests of the investors in our companies. . . . We have proceeded on the theory that the act may be interpreted to permit the retention by our company of such of its major investments as can be reasonably brought into a single integrated system by the acquisition of other properties which, first, will be benefited by the interconnection and, second, have not too great a value relative to that of the properties which they will serve to connect.

While Mr. Fogarty did not make any definite statement regarding the system properties which North American wants to acquire in order to round out its territorial groups, press reports indicated that the plan presented to the SEC suggested the acquisition of certain parts of the United Light and Power system, which flank North American units in Missouri and Kansas. The Harrison Williams interests control about 25 per cent of the voting stock of the United Light and Power Company.

North American's 32.8 per cent stock interest in Pacific Gas and Electric and 19.2 per cent equity in Detroit Edison will, it is thought, be scaled down to less than 10 per cent, either through direct sale or by exchanging these securities for those of other companies.

Large Block of North American Stock to Be Marketed

President Finney of American Cities Power & Light Corporation and Electric Shareholdings Corporation has announced that 775,000 shares of North American Company common stock, with a current market value in the neighborhood of around $18,000,000, will be acquired from his two companies by a banking syndicate with a view to public distribution, the object being to reduce the companies' joint holdings from 18.3 per cent to below 10 per cent (the statutory limit to avoid holding company status). The funds obtained will be used "for reinvestment and other corporate purposes."

The registration statement filed by North American Company November 10th, covering the block of stock to be marketed by the affiliated companies, explains the status of these affiliates as follows:

> Neither the American Cities Power & Light Corporation, with its wholly owned subsidiary, the Consolidated Holdings Corporation, nor the Electric Shareholdings Corporation, with its wholly owned subsidiary, the Falkland Corporation, owns in excess of 10 per cent of the outstanding voting stock of the North American Company, so that neither of these companies is, by virtue of such stock ownership, a "holding company" as defined in §2(a)(7)(A) of the Holding Company Act.
>
> These companies own, in the aggregate, 990,437 common shares of North American.

The majority, however, of the voting stocks of both American Cities Power & Light and Electric Shareholdings is owned directly or indirectly by the Central States Electric Corporation; and Central States and its wholly owned subsidiary, the Utility Shares Corporation, own directly 481,800 common shares of North American.

Central States Electric, American Cities Power & Light, Electric Shareholdings, and Harrison Williams through the New Empire Corporation and other wholly owned companies own in the aggregate, directly or indirectly, over 49 per cent of the voting stock of the Blue Ridge Corporation, which company owns 55,000 common shares of North American.

Over 50 per cent of the voting stock of Central States Electric is owned beneficially by Harrison Williams through the New Empire Corporation and other wholly owned companies, which themselves own 156,352 shares of North American. The several ownerships of common stock of North American referred to in this paragraph aggregate 1,683,589 shares and represent 18.346 per cent of the total outstanding voting stock of North American.

Although the above stockholders disclaim admission of the existence of control of North American and although none of such stockholders operates as or is staffed to operate as a holding company, it is deemed desirable by the vendors to reduce below 10 per cent the aggregate holdings of the stockholders named above of the voting stock of North American so that none of such stockholders could be included within the definition of a "holding company."

United Light and Power to Recapitalize

CHARLES S. McCain, president of United Light and Power Company (a $600,000,000 system operating in a dozen states), on November 9th sent a letter to Chairman Douglas of the SEC regarding system simplification and integration, from which the following is quoted:

> Briefly, the plan provides that simplification shall be accomplished principally by
>
> (a) A recapitalization of the United Light and Power Company;
>
> (b) The elimination of certain intermediate holding companies;
>
> (c) The gradual reduction of publicly held securities of major holding companies as a step toward the elimination of other intermediate holding companies; and
>
> (d) The elimination of numerous subsidiary operating companies, to be accomplished by mergers or consolidations of such companies.
>
> The geographical integration features are described in the plan. In view of the tentative character of the plan we request that these features be kept confidential.

Mr. Douglas of the SEC, in an "off-the-record" talk at the Harvard Club in Boston, described the receipt of the plans of the North American and the United Light and Power systems "as the best news we've had in a long time." He said they were significant because they were submitted well in advance of the deadline for submission of such plans and because they indicated a genuine step toward voluntary coöperation in simplifying and making "more conservative" the financial structure of the big utility holding companies.

United Corporation to Enter Underwriting Field

UNITED Corporation, in filing its plan with the SEC to conform to § 11 of the Utility Act, has indicated that it intends to dispose of its holdings of utility stocks in excess of 10 per cent of any individual issue. In order to avoid the status of holding company, United will find it necessary eventually to dispose of about 1,202,000 shares of Columbia Gas, 3,500,000 shares of United Gas Improvement, 1,400,000 shares of Niagara Hudson Power, and 438,000 shares of Public Service Corporation of New Jersey. In the case of other large holdings, such as Commonwealth & Southern, no action would be required.

The company indicated that, as opportunity permitted, it intends to diversify its portfolio and also participate in the financing and underwriting of new capital issues in the utility and other fields. The public utility industry, in common with all others, has need each year for large amounts of new capital, and sound capitalization would seem to require that at least half of this new capital be raised through the issuance of equity securities, George H. Howard, president of the United Corporation, pointed out in his

letter to William O. Douglas, chairman of the SEC.

"In our opinion," Mr. Howard added, "the United Corporation can aid in this needed equity financing and be in a position also to assist in some of the financing required in connection with the various steps of integration of the utility industry throughout the country."

November Financing Light, After Heavy October; Many Issues Registered

TOTAL financing in October was the heaviest for any October in eleven years, and the largest for any individual month since January last year. *The Commercial and Financial Chronicle* placed the total at $279,100,000, of which all but $20,441,110 represented refunding issues.

November, however, was a period of "consolidation" so far as public offerings are concerned, no issues of any importance being scheduled. The three financial holidays, plus the international news and the sagging stock market may have been responsible. However, many new issues are projected for December action.

Four utilities filed about $76,000,000 new financing on November 17th. The largest amount was by the Central Illinois Public Service Company, a subsidiary of the Middle West Corporation, covering $38,000,000 of 3¾ per cent first mortgage bonds, Series A, due on December 1, 1968, and $10,000,000 of 3½-4 per cent serial debentures due December 1, 1939, to December 1, 1948.

An application by the Connecticut Light and Power Company, a subsidiary of the United Gas Improvement Company, covered $15,000,000 of first and refunding 3¼ per cent mortgage bonds, Series H, due on December 1, 1968, to be sold privately, the proceeds to be used largely for refunding purposes.

An application by the Green Mountain Power Corporation, subsidiary of the New England Power Association, covered $7,750,000 of first and refunding mortgage 3¾ per cent bonds, due in 1963, and $1,375,000 of 4¼ per cent serial notes due from 1940 to 1953.

AN application by the Central Maine Power Company, a subsidiary of the New England Public Service Company, covered $4,500,000 of 3½ per cent first and general mortgage bonds, Series H, due in 1966 and 5,000 no-par common shares. The bonds are to be offered through underwriters, and the stock at $100 a share to holders of the company's common and 6 per cent preferred stock, on the basis of one share of new common for each 27.2702 shares of common and preferred stock held. Proceeds will be used principally for refunding, but will include cost of construction of a hydro-electric plant at Solon, Maine.

On November 10th, Michigan Associated Telephone Company registered $2,800,000 first 4s due in 1968. The company is a subsidiary of General Telephone Corporation, which is expected to carry on a refunding program for other subsidiaries over the next few months.

The Blackstone Valley Gas & Electric Company, Pawtucket, R. I., filed a registration statement covering issuance of $4,000,000 3½ per cent mortgage and collateral trust bonds, Series D, due on December 1, 1968.

Commonwealth Edison has placed in registration two additional bond issues, $34,000,000 first 3½s of 1968 and $25,300,000 convertible debenture 3½s of 1968. The first mortgage bonds are being sold privately to seven large insurance companies at 104. The convertible debentures will be offered pro rata to stockholders at par at the rate of $3.12½ for each share of stock held on the record date (planned for early in December). Each $100 debenture is convertible into four shares of Commonwealth Edison stock. Of the $78,581,500 of these debentures already issued, an aggregate of $5,508,900 has been converted into 220,356 shares. The convertible debentures will be underwritten by substantially the same group of underwriters which handled the previous issues.

On November 9th, Public Service

Company of New Hampshire registered 8,800 shares of $5 preferred stock to be offered at 90.

New England and Long Island Hurricane Losses

THE hurricane and tidal wave which struck the northeastern seaboard on September 21st had a severe effect on the earnings of many utilities in the territory affected.

International Hydro-Electric reported that improved earnings of other subsidiaries were offset by a sharp decline in earnings of New England Power Association. Property damage and loss of revenue from the storm were estimated at about $3,000,000 but the relative amounts chargeable to expense and property replacement were not reported.

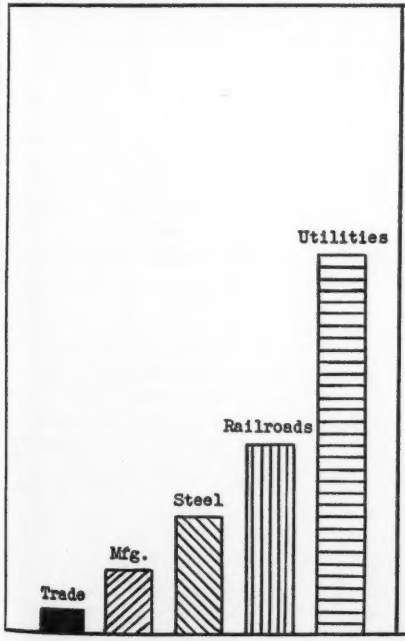
President Comerford of Boston Edison Company stated:

> Earnings for the third quarter of this year have been affected by two extraordinary items resulting from the hurricane of September 21st. During September, out-of-pocket expenditures occasioned by the hurricane were $308,515. Of our reduction in gross revenue for the quarter we estimate that $115,000 was the direct result of the hurricane. These two items, totaling $423,515, represent 68 cents a share on our outstanding stock. . . . Our earnings for the fourth quarter will also be adversely affected. Meter readings during October will reflect more fully the days when the services of customers were interrupted. Work of rehabilitating our distribution system continued into October, although the peak of these expenditures was reached in the first few days of the month.

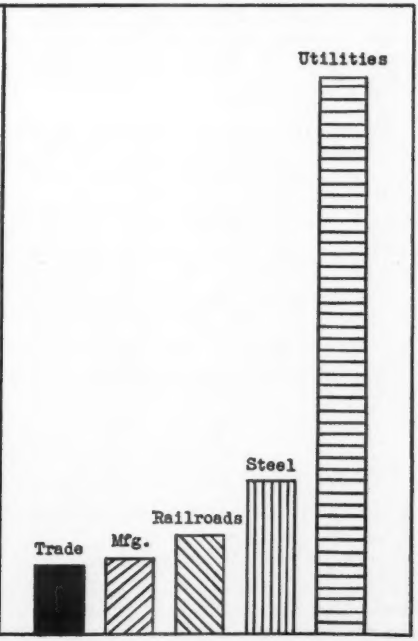
Total damage and loss of revenue had previously been estimated at $1,000,000.

New England Telephone & Telegraph Company estimated its total storm cost

Relative Amount of Industrial Gross Revenue Paid in Taxes



Relative Amount of Industrial Taxes Paid per Employee



at $6,000,000. Of this amount about $2,200,000 was chargeable to expense accounts ($1,800,000 in 1938, and $400,000 in 1939); about $3,500,000, to depreciation reserve; and the remaining $300,000, to plant accounts.

Connecticut Power & Light Company's loss is not indicated but net income for the September quarter was moderately lower than last year.

The Long Island Lighting Company on November 18th omitted dividends on the 6 per cent and 7 per cent preferred stocks (half of the regular rates had been paid for about twelve months previous). Hurricane damage, together with the amount of business lost while lines were out of service, exceeded $300,000. "Forecasts indicate that the company's earnings will be approximately $1,200,000 this year," President Barrett stated. He said further:

> Out of this sum an amount of $540,000 must be appropriated to a special surplus account in accordance with the requirements of the public service commission and is not available for dividends. Dividends of $599,267 have already been declared and paid to the preferred shareholders this year. Directors, therefore, felt it inadvisable for the company to pay further dividends at this time without current earnings being available for that purpose.

Despite the need for omission of the dividends at the present time, Mr. Barrett expressed optimism over the future outlook for the company. "Revenues continue to increase satisfactorily," he said, "and while net income of the company will probably be approximately $200,000 below that of last year, this is favorable in view of the fact that $360,000 more is being charged this year than last for depreciation, and operating taxes are up approximately $230,000."

Electric Output Exceeds 1937

For the week ended November 12th, electric power production was 2,209,324,000 kilowatt hours compared with 2,176,557,000 for the corresponding week last year, a gain of 1½ per cent. In the previous week a gain of 0.2 per cent had been registered. The following table gives percentage comparisons by geographic regions with corresponding weeks a year ago:

	Weeks Ended	
	Nov. 12	*Nov. 5*
New England	+10.8	+6.4
Middle Atlantic	+ 2.4	+3.6
Central Industrial	+ 0.4	—3.1
West Central	+ 1.6	—0.2
Southern States	+ 1.4	—1.4
Rocky Mountain	— 3.6	—3.5
Pacific Coast	+ 2.9	+2.8
Entire United States	+ 1.5	+0.2

Electricity was one of the first of the major business indices to exceed last year, carloadings still running substantially lower. Due to the sharp downward trend of business during November and December last year, comparisons from this point on should be favorable.

Corporate News

Electric Power Associates has declared a dividend distribution of 200,000 shares of American Water Works & Electric to its own stockholders, in the ratio of one-quarter share of Water Works for each common and Class "A" share of Electric Power Associates. A cash dividend of 10 cents was also declared. Following the dividend distribution the company will still retain 35,193 common shares of Water Works. President Porter stated that remaining cash and securities had a market value on October 25th equal to about $4.30 per share.

In a report to stockholders, President J. I. Mange of Associated Gas & Electric indicated that system properties in New York, Pennsylvania, and New Jersey will form the nucleus of a closely integrated utility group in the event that the system must dispose of some of its scattered holdings. Sixty-five per cent of the system's customers are concentrated in these three states, Mr. Mange said, pointing out that a special committee is preparing a tentative plan of integration and simplification for compliance with §11 of the Public Utility Act.

INTERIM EARNINGS STATEMENTS

Electric and Gas	*No. of Months Included*	*End of Period*	*System Earnings per Share (a)* *Last Period*	*Previous Period*	*Per Cent Increase*	*Per Cent Decrease*
American Gas & Electric	12	Sept. 30 (b)	$2.17	$2.49	..	13%
American Power & Light (Pfd.)	12	Sept. 30	5.49	6.42	..	15
American Water Works	12	Sept. 30 (c)	.36	1.38	..	74
Boston Edison	12	Sept. 30 (c)	8.30	8.86	..	6
Cities Service P. & L. (Pfd.)	9	June 30	14.35	15.75	..	9
Columbia Gas & Electric	12	Sept. 30	.36	.57	..	37
Commonwealth Edison	9	Sept. 30 (c)	1.68	1.38	22%	..
Commonwealth & Southern (Pfd.)	12	Sept. 30 (bc)	8.16	10.66	..	23
Consolidated Edison, N. Y.	12	Sept. 30 (c)	2.23	2.16	3	..
Consolidated Gas of Baltimore	12	Sept. 30 (c)	3.95	4.67	..	15
Detroit Edison	12	Oct. 31	5.48	8.38	..	35
Electric Power & Lt. (1st Pfd.)	12	Sept. 30	6.61	12.41	..	47
Inter. Hydro-Electric (Pfd.)	12	Sept. 30 (c)	3.61	18.46	..	82
Long Island Lighting (Pfd.)	12	Sept. 30	2.60	7.74	..	66
Middle West Corp.	9	Sept. 30 (c)	.56	.40	40	..
National Power & Light	12	Sept. 30 (c)	1.27	1.29	..	2
Niagara Hudson Power	12	Sept. 30 (c)	.56	.87	..	36
North American Co.	12	Sept. 30	1.59	2.05	..	22
Pacific Gas & Electric	12	Sept. 30	2.42	2.84	..	15
Public Service Corp. of N. J.	12	Oct. 31 (b)	2.27	2.67	..	15
Southern California Edison	12	Sept. 30 (c)	1.92	2.26	..	14
Standard Gas & Elec. (Pr. Pfd.)	12	June 30 (c)	4.82	10.64	..	55
United Gas Improvement	12	Sept. 30 (c)	.97	1.12	..	13
United Light & Power (Pfd.)	12	Sept. 30	6.52	8.80	..	26
Gas Companies						
American Light & Traction	12	Sept. 30	1.40	1.82	..	23
Brooklyn Union Gas	12	Sept. 30 (c)	2.14	2.37	..	10
Lone Star Gas	12	Sept. 30 (c)	.83	1.06	..	12
Pacific Lighting	12	Sept. 30	3.92	4.50	..	13
Peoples Gas Light & Coke	12	Sept. 30 (c)	2.52	4.67	..	46
United Gas Corp. (1st Pfd.)	12	Sept. 30 (c)	13.60	25.70	..	47
Telephone and Telegraph						
American Tel. & Tel. (e)	12	Aug. 31 (c)	8.39	10.46	..	20
General Telephone (f)	12	Sept. 30 (c)	1.55	1.61	..	4
Western Union Telegraph	12	Sept. 30 (c)	D1.00	4.80	..	..
Traction Companies						
Greyhound Corp.	12	Sept. 30 (c)	1.79	1.79	..	..
Twin City Rapid Transit	12	Sept. 30 (c)	D1.37	.96	..	..
Systems outside United States						
American & Foreign Power (Pfd.)	12	June 30 (c)	6.53	7.41	..	12
International Tel. & Tel. (d)	6	June 30 (c)	.68	.67	1	..

D—Deficit.

(a) On common stock, unless otherwise indicated following name of company; in some cases, Federal surtax not deducted.

(b) Data also available for month indicated.

(c) Similar report also published for quarter ending same period.

(d) Excludes Spanish subsidiaries and Postal Tel. & Tel. Co.

(e) For nine months ended September 30th the parent company earned $5.96 compared with $7.06 last year.

(f) For the twelve months ended September 30, 1938, $1.86 per share was reported including the earnings (exclusive of fixed charges of parent company) of Indiana Central Telephone Company and subsidiaries for periods prior to August 31, 1938, date of completion of reorganization of Indiana Central Telephone Company and transfer of assets to General Telephone Corporation.

What the State Commissioners Are Thinking About

Excerpts from the opinions expressed in reports and addresses at the annual convention of the National Association of Railroad and Utilities Commissioners in New Orleans, La., from November 15th to November 18th, 1938.

On Competition in Transportation

"COÖRDINATION and improvement of the relations between the different types of carriers mean free and natural exchange of shipments among all types of carriers. If it extends beyond such exchange and joint handling, it is subordination of one type of carriage to another . . . It is not and never has been the policy of the people or of their governments to protect any existing public utility against other public utilities. Adequate service includes price, dispatch, efficiency, and continuity, and regulation is for the accomplishment of that ultimate object. The benefits, if any, by way of restricted competition, coördination and the like, inuring to the benefit of other facilities, are incidental to but not the purpose of such regulation."

—EXCERPT *from Report of Committee on Motor Vehicle Transportation.*

On Accounting

"To be effective and worth while, accounting rules and regulations require constant supervision and examination on the part of the regulatory authorities, to see that they are being complied with. To do this requires a larger personnel than has heretofore been available either to the Federal or to the state commissions. Concrete results in effecting the regulatory benefits to the public will assure better financial support to bring about the needed personnel. I cannot hope here to point out the many instances before our accounting department where coöperation with the state commissions is imperative. Various classes of accounts and of accounting practice, not yet made effective, but requiring uniformity of action and of procedure thereafter, on the part of both Federal and state commission authorities, are, as you know, now under consideration."

—PAUL A. WALKER,
Member, Federal Communications Commission.

"IT is the duty of regulatory agencies to watch closely the investments in fixed capital of the utilities they regulate, their reserves, revenues, and expenses. Commissions should not stand for unwarranted, extravagant, and unnecessary expenditures by a utility in the operation of its plant, and when

such expenditures are called to a commission's attention in a rate proceeding they should be promptly thrown out in fixing rates for the future. Since such expenditures made by a utility on its own initiative are not proper, it naturally follows that commissions should be careful not to require a utility to incur expenses that are unnecessary. What I have in mind is the growing tendency on the part of regulatory agencies to require special rights concerning the affairs, activities, practices, and rates of utilities. Requirements in this respect have tripled in the past three years. All the larger utilities have found it necessary to materially increase their accounting staffs, and an examination of their annual reports will show that the accounting expenses have, in many instances, doubled. These expenses are passed on to the ratepayer and are reflected in the bills he receives each month. So we must, in protecting the users of utility service, who have little ways or means of protecting themselves, be careful that we do not ask for information and special reports from utilities unless such information and such reports are actually necessary for a complete understanding of their operations, and unless the furnishing of them will inure to the benefit of the ratepayer."

—ALEXANDER M. MAHOOD,
Retiring President, National Association of Railroad and Utilities Commissioners.

On Progress of Regulation

"THERE are two other important and vital matters necessitating [Federal-state] coöperation. One is the question of what constitutes exchange rates; that is, whether, for example, a telephone company, by the mere publishing of so-called exchange area rates, may thereby evade both state and interstate jurisdiction. The other problem is designated as one of separation; that is, the determination of where the division between state and interstate jurisdiction on toll calls begins.

"Such a separation is essential before any final solution of exchange and toll rates can be brought about."

—PAUL A. WALKER,
Member, Federal Communications Commission.

On Holding Companies

"IT is not possible to work out all of the problems of the industry on this gradual, piecemeal basis. Some things must be done which require fairly drastic steps. Conspicuous among these are things which primarily affect holding companies and holding company systems—things designed to simplify the corporate structure of the systems and to confine their operations to a scope permitted by the law. Another thing which must be done is to regulate arrangements and charges for servicing. The Public Utility Holding Company Act of 1935 gives our commission comprehensive powers to deal with this problem. Servicing of utilities by companies within the same system must be done at cost; and we are presently engaged in working out with the various systems plans whereby this may be done in the most efficient manner possible, and so as to make it possible for state commissions and ourselves to ascertain and regulate the services actually rendered and the charges actually made.

"In addition, drastic financial reorganization of some companies may be inevitable. A few holding companies and operating companies are now being reorganized under the provisions of the Bankruptcy Act. Others are burdened with such huge arrearages of preferred stock dividends as to make some sort of reorganization imperative. For such companies, the evolutionary process will not suffice; their health has already been impaired so that they need an operation, not medical treatment. They must reorganize, and they can reorganize either in advance of an imperative necessity, or when the imminence of a default makes continuous operation without reorganization an impossibility."

—GEORGE C. MATHEWS,
Member, Securities and Exchange Commission.

"PUBLIC attention has been particularly devoted to those provisions of §11 of the act which require geographical reorientation of the industry. The section imposes upon the commission the duty to limit operations of a holding company to a single integrated public utility system and such other businesses as are reasonably incidental or economically necessary or appropriate to the operation of such systems. By definition, an integrated public utility system is one whose utility assets are capable of physical interconnection and which ordinarily may be economi-

cally operated as a single interconnected and coördinated system, confined within an area, whether in the same or contiguous states, not so large as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation. The commission is empowered to permit the operation of one or more additional integrated systems in one state or adjoining states, which cannot be separately operated without the loss of substantial economies, where the aggregation is not incompatible with the advantages of localized management and efficient operation.

"Most of you are probably aware that some leaders of the industry have recently indicated that they sincerely intend to coöperate with the commission in the accomplishment of the objectives of these provisions of the act. Tangible results of this coöperative attitude have become evident. We have already approved two fairly comprehensive voluntary plans under this section. Other companies have communicated to the commission their tentative proposals for compliance; and negotiations for the sale and exchange of various properties in line with the statutory purpose are under way."

—GEORGE C. MATHEWS,
Member, Securities and Exchange Commission.

On States' Rights in Regulation

"THE situation in regard to telephone, electric, and natural gas utilities is entirely different from that of the railroads. The major part of a railroad's business is across state lines. It naturally follows that the Interstate Commerce Commission, as to such carriers, should have greater authority than the states. Accepting this premise, by the same token, since only a small part of telephone, electric, and natural gas utility operations are interstate, the states should continue to have complete jurisdiction over such utilities, except the operations and functions of such utilities as the states cannot reach under the Constitution as construed by the Supreme Court—to that extent Federal regulation must be provided. Many argue that highly centralized, long-range, Federal regulation is not likely to be any more effective than highly centralized, long-range management of utilities, which was condemned a few years ago. Federal regulation is necessary in order that the activities of utilities across state lines of a national character may be brought under control; but when this is accomplished centralized regulation should end. Federal commissions, in respect to utilities, should perform only those functions that the states cannot perform. To see that these limits are placed upon the Federal agencies is one of the main undertakings of our association and its Washington office. We cannot afford to go to sleep at the switch. We must be constantly on the watch."

—ALEXANDER M. MAHOOD,
Retiring President, National Association of Railroad and Utilities Commissioners.

On Commission Procedure

"AS a result of its survey the committee has found:

"1. That the commissions in general consider their most important task in organizational and procedure matters to be the selection of an adequate, capable, and impartial personnel.

"2. That with such personnel, the commissions feel that full and fair hearings, as well as efficiency and effectiveness of administration, can be realized in public utility regulation without complicated plans of organization and procedure. (In fact, in so far as quality of commission personnel depends upon adequacy of commission funds, one test of the sincerity of the desire of private interests for 'fair play' might be the extent to which they support the commission's efforts to obtain, by means, for example, of assessment of costs statutes recommended by your committee last year, better financial backing for more adequate and competent staffs.)

"3. That assuming the existence of appropriate staff personnel, commissions oppose plans for segregating their executive and prosecuting functions from their judicial or review functions on the general grounds (1) that 'fair play' in administrative action can be achieved without making such a separation of functions, (2) that such plans would cause unnecessary complication and delay in commission action, (3) that it is doubtful that a segregation of functions *can* be made because they are so interwoven and fused in administrative agencies, and (4) that several checks

to the administrative process, including ultimate recourse to the courts, already exist and are adequate protection against *possible abuse* of power. The commissions do not advocate complete autonomy from judicial review, but they are opposed to complicating their own action with unnecessary complex plans of organization and procedure.

"4. That the commissions oppose the plan suggested by the President's Committee on Administrative Management for division of commissions into two agencies—one an administrative body under executive control and the other an independent review body—because they are of the opinion (1) that it would constitute inefficient and burdensome organization and procedure, (2) that the administrative duties of a commission should be largely independent of executive control, (3) that the courts are adequate as a review body, (4) that commission functions are not capable of segregation, and (5) that 'fair play' can be had by simple organization and procedure and relative liberty of action, given competent administrative personnel.

"5. That the commissions oppose the proposal for separating their staffs into two independent sections—the one an administrative, prosecuting section, the other a review section to review the reports of the first section and make recommendations to the commission—because they feel (1) that the plan would be cumbersome and result in additional delays to administrative action, (2) that it would involve considerable additional expense and duplication of work, and (3) that it would render ultimate decision by the commission more difficult. On the other hand, a few commissions would like to see the plan tried, at least on an experimental basis.

"6. That the commissions oppose the plan for creation of an administrative court, consisting of a trial division and an appellate division, primarily because the proposal is in the direction of multiplying tribunals and delaying commission action without contributing in any fundamental way to the fairness of a proceeding.

"7. That most commissions oppose the plan for creation of a public counsellor's office independent of the commission to represent the public interest either on general grounds that commission functions should not be segregated or on specific grounds that this plan is unwarranted. However, three commissions reported that the plan is being tried in their states and none of these commissions voiced an objection to the plan while one referred favorably to it.

"8. That the commissions feel that qualified staff members not only can but will display a professional spirit of accuracy and fairness in advising the commission on disposition of proceedings in which they have taken an active part. However, mediocre or incompetent personnel are considered unreliable for this function.

"9. That *general* use of the examiner-report plan is opposed by approximately the same number of commissions as are in support of it, but that most commissions acknowledge the desirability of this procedure in particular types of cases, as when the evidence is voluminous or highly technical. The commissions believe that the process is too slow and unwieldy, and that it is unnecessary as a general practice.

"10. That if the examiner-report plan were generally adopted, most states would have difficulty finding a sufficient number of qualified examiners on their staffs capable of rendering appropriate reports in contested cases.

"11. That most commissions are of the opinion that an examiner preferably should be an attorney devoting his time only to the position of examiner in commission cases, but that they also believe it is helpful and desirable for an examiner in special cases to have other than attorney qualifications, such as those of an engineer or accountant; and many commissions believe such other qualifications should be required.

"12. That the commissions are of the opinion that full and fair hearings in cases can be realized without the use of the examiner-report plan by any one, or combination of, several methods discussed in the report.

"13. That the commissions recommend the adoption of procedures which will be as simple and informal as is consistent with the requirements for a full and fair hearing.

"14. That the weight of commission opinions is in favor of less complicated and cumbersome procedure in the issuance of temporary orders than in the issuance of final orders, particularly where the final order can correct any errors which are found to exist in the temporary order.

"15. That present practice and procedure of the commissions may be criticized on some points, particularly on the failure of most commissions to adopt and publish rules of practice and procedure, and on the over-reliance placed by most commissions in deciding cases upon staff members active in those cases. But, as noted above, the commissions feel that criticism on the latter point is in some measure unjustified in that they should be free to rely fully upon their staff members, while preserving, however, their own independence of judgment as a determining body.

"16. That in the interest of further progress in public utility regulation there is a pressing need for this association to prepare and recommend to its members a manual on uniform practice and procedure, and a scheme of organization conducive to more efficient regulation and fair play in commission action.

"As a result of these findings we recommend, to fulfill the requirements for efficiency in administration and 'fair play' in procedure:

"1. That the commissions make every effort

to improve the adequacy and quality of their personnel. In this connection the 1937 report of the committee, which recommends a uniform assessment of costs statute for financing commissions, may prove helpful.

"2. That the Special Committee on Uniform Practice and Procedure and this committee coöperate fully in developing and recommending to this association a plan or plans of organization and procedure for state public utility commissions.

"3. That in such plan or plans no attempt should be made to provide for segregation of commission functions, in view of the consensus of commission opinions that provision should be made for staff members to take an active part in the investigation and hearing of cases and in following through to their ultimate disposition by the commission.

"4. That careful consideration should be given to the possible methods for achieving full and fair hearings, particularly the examiner-report plan.

"5. That adequate provisions for rehearing and court review should be incorporated in such plan or plans."

—EXCERPT *from Report of Committee on Progress in Public Utility Regulation.*

On Security Registration

"UNFORTUNATELY, not all of the public utility operating and holding companies of the country are as strong financially as we should desire; unfortunately, there are Grade B and C companies, which sometimes find it necessary to issue Grade B or C securities. When a declaration covering such securities is filed with the Securities and Exchange Commission under §7 of the act, we cannot allow their issuance unless they meet the standards of the act. In the first place, they must be the kind of securities permitted by §7(c) of the act; and in the second place, they must satisfy the standards of §7(d). We may not permit the issue to go out if we find that the securities are not reasonably adapted to the earning power of the issuer or to its security structure and that of other companies in the same holding company system, or that the terms and conditions of the issue or sale are detrimental to the public interest or the interest of investors and consumers."

—GEORGE C. MATHEWS,
Member, Securities and Exchange Commission.

On Federal-State Coöperation

"I AM convinced that the plan to facilitate coöperation by state commissions in proceedings before the Interstate Commerce Commission, adopted at our last convention, which provides, among other things, for the election of members of a panel of coöperators, constitutes a long step toward the perfecting of coöperative procedure. I can't say that it is perfect. But the method of selecting state commissioners in cases in which coöperation is desired has proven its worth and it is in harmony with the democratic spirit and traditions of this association. Such a plan could well be carried into the coöperative agreements we have entered into with other Federal commissions. The election of panels of coöperators takes considerable responsibility from your executive officer and places such responsibility upon the shoulders of the state commissions, where it belongs. I hope that the plan now in force will be broadened to apply to the election of coöperators in proceedings before other Federal commissions, and that it will be improved as experience dictates. State commissions must continue their active coöperation in proceedings of nation-wide importance brought before, or initiated by, Federal agencies. Such coöperation is highly essential to the full protection of the interests of the people of our respective states."

—ALEXANDER M. MAHOOD,
Retiring President, National Association of Railroad and Utilities Commissioners.

"COÖPERATION by a Federal commission with state commissions was first authorized by act of Congress with respect to railroads in the Transportation Act amendments in 1920. Actual experience since then has so demonstrated its practicability, its virtues, and its benefits, that every statute since enacted, carrying Federal regulation into a new field, has contained similar provisions, or provisions much broader and more far-reaching. Regulation by commission is based upon the idea that commissions will be able to deal expertly with the problems of regulation because of their special knowledge. A Federal commission can be familiar with an industry in its broad aspects, but this country is too great to enable any one body of men to be familiar with peculiar local situations in

all the different states. The state commissions, however, necessarily have a knowledge concerning their respective states which a Federal commission cannot possibly possess; and the public is entitled to the benefit of that special knowledge. Congress has legislated to make it available to the Federal commissions; and the state commissions cannot perform their full duty to the people of their states if they do not participate in the solution of problems which affect their states, even though such problems, under our constitutional division of powers, may in some circumstances be beyond the limits of state jurisdiction."

—ALEXANDER M. MAHOOD,
Retiring President, National Association of Railroad and Utilities Commissioners.

"SPEAKING for worth-while coöperation by the Federal Communications Commission, I vision the day when our commission will be sufficiently manned and financed that we can make available at your request both information and personnel assistance. Today, the great central organization of the Bell Telephone System, for example, has experts available on call for any one of its subsidiaries, the result being that the remotest Bell company has the resources of this powerful group subject to its call; whereas the local authority, or state commission, being left to itself, is without resources or facilities adequate either to effect regulation or to protect the public. In the Proposed Report on the telephone investigation I have indicated an effective Federal working organization wherein are coördinated all classes of able personnel needed, functioning effectively to accomplish adequate public regulation. Such an organization, properly supported, as it would be if it had the enthusiastic and active backing of the several state commissions, would be an effective agency of real coöperation and would make possible nation-wide effective regulation by state and Federal authorities of all the utilities under our mutual jurisdiction."

—PAUL A. WALKER,
Member, Federal Communications Commission.

"THE Federal [Communications] Commission, on its part, attempted to carry through this spirit and purpose of coöperation by regularly making available to each commission copies of reports compiled and introduced from time to time in the investigation for the use of the state authorities. During the last year of the investigation, reports particularly pertinent to state commission activities were furnished the state commissions through the rate and research group of the telephone investigation. That the information gathered and furnished to the states by the Federal commission was put to practical use, is illustrated by actions taken by the several state commissions. The aggravating hand-set charge, now fortunately on its way into oblivion, is a concrete example. I could recite other instances brought to me by state commission representatives, in various investigations and rate cases."

—PAUL A. WALKER,
Member, Federal Communications Commission.

On Reorganization of Commission Staffs

"IN its questionnaire your committee pointed out that public utility regulatory commissions have been criticized as irresponsible, independent agencies embodying an improper mixture of policy-determining functions on the one hand and judicial functions on the other. The committee also pointed out that proposals for remedying this situation include: (1) division of such bodies into two separate agencies, one an administrative, policy-determining body subject to executive control, the other an independent judicial or review body; (2) division of a commission's staff into two separate sections, one a prosecuting section, the other a review section for reviewing the proceedings of the prosecuting section and making recommendations to the commission, both such staff sections being independent of each other; (3) creation of a special administrative court, consisting of a trial division and an appellate division, before which commissions would prosecute their proceedings; and (4) creation of a public counsellor's office independent of the commission to represent the public interest in proceedings before the commission. The committee then asked the commissions (1) to describe any steps they might have taken in the direction of segregating the policy-determining function from the judicial or review function, and (2) to state what commission organization and procedure would, in their opinion, best conduce to the proper dispatch of business and to the ends of justice.

"Only five out of the thirty commissions answering the first question indicated that any steps had been taken to segregate the administrative, prosecuting function from the judicial or review function. Four of these were state commissions and one was a Federal commission. One of these state commissions and the Federal commission indicated that a segregation of functions within the staff had been attempted by making the examiner section independent of the staff personnel. . . . In the three remaining states the segregation of

functions was in the form of the public counsellor plan. . . . The returns show conclusively that the commissions opposing any attempt to separate commission functions far outnumber those in favor of such a separation. A few comments were submitted in favor of each of the four proposals mentioned in the committee's question, but the weight of opinion is overwhelmingly opposed to proposals of this nature. Such a summary statement of conclusions, however, does not do justice to the many excellent opinions expressed on this subject. The committee feels that a review of these opinions would be not only interesting but helpful to an understanding and solution of the problem under consideration."

—EXCERPT *from Report of Committee on Progress in Public Utility Regulation.*

On Rate Regulation

"THERE are many suggestions which may be utilized to advantage by the individual commissions to accomplish desirable ends in their respective localities. However, I am not in sympathy with the declared purpose of the report to recommend 'a program directed toward the formulation of uniform rules and regulations governing the construction, filing, and posting of rates to be adopted by state and Federal regulatory agencies.' Nor do I favor the appointment of a special committee for the purpose of preparing and submitting to the association a uniform set of rules and regulations covering the construction, filing, and posting of rates. I think it would be labor lost. It is obvious that complete uniformity cannot be achieved and it is equally plain that it would not be practical or desirable for application throughout any particular state or number of states. It has not been made to appear that there is any demand for such a program emanating either from patrons of utilities or from the utilities themselves. Nor does it appear that the commissions have experienced any difficulty or unfavorable experience in the methods heretofore pursued."

—SPECIAL *statement by Commissioner John S. Boyer, of Missouri.*

"FOR many years, and particularly during the last few years, the National Association of Railroad and Utilities Commissioners has devoted a great deal of effort to the preparation of improved and uniform accounting systems and their adoption by regulatory commissions. This fact provides ample precedent for turning our attention to the problem of uniform rules and regulations covering the construction, filing, and posting of rates. In fact the two matters are interrelated. Accounting systems and reports as prescribed by regulatory agencies are intended primarily as tools to facilitate administration of the duties of such agencies. A soundly conceived, uniform set of rules and regulations in regard to rates will augment and improve those tools. Few, if any, data presently obtainable from accounting systems and reports are useful in revenue analysis and rate administration. The revenue classifications set forth in the accounting systems and reports conceal as much as they reveal. Refinement of the classifications and greater detail in reporting are necessary to better an administrative program of rate regulation. Adoption of the 'Service Classification' plan . . . has the possibility of the solution of many problems of accounting and statistics in relation to rate and revenue analysis. The solution of these problems, in turn, will provide improved tools for regulation."

—EXCERPT *from Report of Committee on Public Utility Rates.*

On Electric Power and the National Defense

"REQUIREMENTS for electric power have resumed the strongly upward trend observed from 1920 to 1929 and again from 1932 to 1937. Factors influencing a continued and accelerated growth of load show no signs of diminishing effect. Reliability of service is increasingly important. Facilities to supply these increased demands will not long be adequate for the need, and existing programs to provide additional facilities are for the most part insufficient. There is doubt whether the capacity of manufacturers of steam turbine generators is sufficient to produce enough equipment to meet the need unless orders are placed in the near future. Financing problems of the utility operating companies are not, in general, insurmountable.

"The importance of adequate electric service to the well-being and economic progress of the country imposes upon the public agencies concerned new duties and new activities. The utility industry and also the regulatory commissions will find it necessary in

the future to devote an increasing amount of attention to the adequacy and reliability of the physical plants of electric utility systems. Regulatory agencies may well place special emphasis on the provision of adequate facilities for immediate future needs, arranging if necessary for special reports and exchange of information in order to make up-to-date information available.

"The burden of this work should be shared by all concerned with its success. Public utility regulating agencies should study and ascertain the trends of electric energy consumption in their respective areas, the adequacy of existing facilities, and the most economical and suitable plans for additional generating capacity and transmission and distribution facilities.

"There should be more frequent reports to the state and Federal regulatory bodies, prepared, no doubt, in such brief form as to add little or nothing to the considerable burdens already placed on the responding utilities but so designed as to yield up-to-date information on a national scale and in usable form. There should be improved coöperation between municipal, state, Federal, and industrial agencies to make quickly available such data as will facilitate more intelligent planning. It is believed that the information necessary for such up-to-date reports can be provided and collected with little increased expense and that the results will benefit all concerned, if the requisite coöperative machinery can be established.

"It is highly necessary that in times of peace the nation should prepare to meet the power demands of war. With the long periods required for the design and construction of both steam and hydroelectric plants, it would be disastrous to await the actual coming of a war crisis to take the necessary steps in this direction. While the major responsibility for any plans to provide an adequate supply of power in the event of war unquestionably rests with the Federal government, the public service commissions of the several states are directly and deeply interested in this problem."

—EXCERPT *from Report of Committee on Generation and Distribution of Electric Power.*

On Transportation Policy

"IN the economics of commerce, cost of production, though requiring constant attention, is under satisfactory control, but cost of distribution has steadily mounted. Public demand creates each type of carriage. The proper type of transportation for which mankind continually strives is that which distributes economically, efficiently, and promptly. No single type can satisfy public requirement. Each type adapts itself to the field it best serves. One type cannot supplant a service more adequately rendered by another. Regulation to that end can only destroy by making distribution more costly and less efficient, without permanent benefit to the favored utility, and with consequent, inevitable loss to commerce and livelihood.

"These principles are fully recognized in the declaration of policy under §202 of the Federal Motor Carrier Act, and now incorporated in the statutes of many states. To improve the relations between and coördinate transportation by and regulation of motor carriers and other carriers, as provided under such section, means to harmonize and make equal, not to subordinate. Promotion, preservation, and coördination in the interest of the public, require that rail, water, air, and highway transportation be regulated individually in each respective field. Coördination and improvement of the relations between the different types of carriers mean free and natural exchange of shipments among all types of carriers. If it extends beyond such exchange and joint handling, it is subordination of one type of carriage to another."

—EXCERPT *from Report of Committee on Motor Vehicle Transportation.*

On New Legislation

"OUR association, through its executive and legislative committees, took affirmative action on only three bills which were before the last Congress for enactment.

"1. The Natural Gas Act (commonly referred to as the Lea Bill, H.R. 4008), which has for its purpose the regulation of the transportation and sale at wholesale of natural gas in interstate commerce and placing its supervision and control under the jurisdiction of the Federal Power Commission. This legislation had the approval of this association, and Solicitor Benton and his assistants actively participated in the preparation of it. The rights of the states have been reasonably reserved.

"2. The Civil Aeronautics Authority Act, to regulate the interstate transportation of

passengers and property by aircraft carriers, also had the approval of our association by appropriate resolution. However, all of the suggestions offered by Solicitor Benton, who appeared on behalf of our association at the hearing of this matter, were not approved. A new and independent agency was created to supervise and control this new form of transportation rather than placing it under the jurisdiction of the Interstate Commerce Commission.

"3. The amendments to the Motor Carrier Act brought about much controversy. Consequently, it was obvious from the beginning that we were going to be given no more than courteous consideration. Solicitor Benton made one of the strongest and most convincing appeals in behalf of the amendments offered by us that it has ever been my privilege to hear. However, it was evident that, regardless of the convincing arguments made, because of the controversial aspects of the amendments and the desire of the Congress to enact some legislation, the convincing arguments of Mr. Benton would not be sufficient to get our amendments adopted."

—EXCERPT *from Report of Committee on Legislation.*

On Utility Reorganization

"THESE cases, thus roughly described, illustrate what I mean by suggesting that reorganization can often be effected by a gradual process. Careful adjustment of sinking-fund provisions; adequate provision for maintenance and depreciation; and conservative dividend policies can go a long way towards accomplishing this purpose.

"I am aware that sometimes state commissions find it difficult to insist upon some of the adjustments which will aid in the 'reorganization' process. They must keep constantly in mind the interests of consumers—the ratepayers; and in many of these matters there appears to be a clash of interest between consumers and investors. For example, it cannot be denied that increased depreciation is advantageous to bondholders; but increased provision for depreciation means an increase in the operating costs of the utility, and consequently may affect rates. Similarly, increased maintenance is advantageous to a company's bondholders, and so far as it results in immediate tangible improvements in service, it is advantageous to consumers. But here again, increased maintenance means a rise in operating expenses and may affect rates."

—GEORGE C. MATHEWS,
Member, Securities and Exchange Commission.

On Depreciation Principles and Methods

"1. THE *same factors that cause annual depreciation also cause depreciation to be deducted from property in determining a rate base.*

"Depreciation is a loss in service value of plant. The annual loss is accompanied by a concomitant increase in the accumulated loss in service value. Regardless of the cause of the loss, if properly to be considered for purposes of annual depreciation it should likewise be considered in determining the amount to be deducted in finding a rate base.

"2. Commissions should use consistent methods in determining depreciation expense and depreciation for rate base purposes and stress the necessity for such consistency in their decisions.

"Sound depreciation methods used consistently for both annual depreciation and total depreciation are fair both to the utility and the customer. Through constant use of consistent methods by regulatory authorities and continual reiteration of this principle in their decisions, general enlightenment as to the necessity for consistent application of sound depreciation principles may result and there may no longer be an encouragement for the promulgation of illogical and inequitable methods which have sometimes been accepted in the past.

"3. Utilities should record the depreciation accruing in their property and commissions should insist that such procedure be followed under a sound method of accounting for depreciation.

"Depreciation is a cost of operation. It is necessary that this cost be recorded in order that the income statement and balance sheet of the utility be correct. Failure to record this cost is misleading to investors, regulatory commissions, and customers. Likewise, the practice of recording too much for depreciation is misleading. The intent should be to record as nearly as practical the actual loss in service value of depreciable plant.

"4. The straight-line method is recommended for use generally for accounting and regulatory purposes.

"The straight-line method is practical, easy of administration, and, when applied consistently for both annual depreciation and total depreciation purposes, accounts for the loss in service value of plant in a manner equitable to the utility, the customer, and the investor. The majority of utilities following depreciation accounting use the straight-line method and its use will probably increase. Although the straight-line method is recommended, the sinking-fund method, if applied correctly, may be used with fairly equitable results.

"5. The practice sometimes advocated of including straight-line depreciation expense as a cost of operation and deducting only so-called observed depreciation in determining a rate base is incorrect in principle and unjust in result and should not be permitted.

"The practice of deducting only so-called observed depreciation, frequently only the observable physical deterioration, from the property base in the face of straight-line annual depreciation expense occasioned by all factors causing depreciation results in charging rates for utility service higher than indicated as necessary by the actual requirements for return. In the light of the obvious injustice to customers of such a practice, claims for this treatment of depreciation in rate cases smack of insincerity and the desire of the claimant to create a favorable showing even though truth, logic, and equity be violated. Commissions should give such claims scant consideration and strive to enlighten others that injustice may not be done inadvertently.

"6. The reserve requirement should be deducted from utility plant in determining a rate base.

"The annual loss from depreciation should be included in allowed operating expenses and the reserve requirement indicated by the depreciation estimates deducted. The deduction of the reserve requirement recognizes an accumulated loss in service value consistent with the annual loss included in operating expenses. The practice is fair both to customer and investor. However, where the depreciation reserve accumulated under a sound method of depreciation accounting reasonably approximates the reserve requirement it may be more equitable to deduct the depreciation reserve.

"7. The reserve for depreciation should be shown on the asset side of the balance sheet as a deduction from depreciable plant.

"The reserve for depreciation represents the extent to which the aggregate loss in service value of plant has been recorded in the accounts and should be identified directly with the depreciable property. The present utility accounting practice of showing the reserve on the liability side of the balance sheet puts too much emphasis on the reserve as a source of capital rather than as the recorded accumulated loss in service value of plant. Showing the reserve on the balance sheet as a deduction from depreciable plant will result in improved financial statements and aid in establishing a better understanding of the reserve for depreciation as an account necessarily to be considered in determining the book value of depreciable property.

"8. Separate rates of depreciation and separate depreciation reserves should be used for each class of depreciable property.

"Rates of depreciation vary for different classes of utility plant. More accurate estimates can be made of each class if considered separately than if a composite rate applicable to the entire plant is estimated. The maintenance of separate reserves for depreciation for each depreciable class of plant makes available data valuable in depreciation studies and may be a check on the accuracy of the estimates of the class rates of depreciation. For balance sheet and financial purposes, however, the reserve for depreciation should be considered as a whole so that overestimates on some classes of plant may be balanced against underestimates on others. Continued experience will permit closer estimates on all classes.

"9. In cases where the sinking-fund method of depreciation accounting is used the so-called interest on the reserve balance should be included with the annuity provision in depreciation expense.

"Depreciation is a loss in service value of plant, which is a cost of operation. This cost of operation cannot be correctly recorded partly as depreciation expense and partly as interest expense. The service value of property is the total depreciation to be recorded during the life of the plant and this amount should be recorded as depreciation expense if the accounts are to record the facts correctly.

"10. If the sinking-fund method is used in connection with an undepreciated rate base the sinking-fund interest rate should be the same as the allowed rate of return.

"In the event the sinking-fund method is used with an undepreciated rate base, the so-called interest on the sinking-fund depreciation reserve should be removed from operating expenses and treated as a gross income deduction for the purposes of the rate proceeding. The sinking-fund interest rate should be the same as the allowed rate of return in order to compensate for the fact that no depreciation is deducted from the property. If the sinking-fund interest rate is less than the allowed rate of return, the combined depreciation and return allowed will be excessive in an amount equal to the difference between the sinking-fund interest rate and the rate of return times the depreciation otherwise deductible in determining the rate base."

—EXCERPT *from Report of Special Committee on Depreciation.*

The March of Events

State Commissioners Convention

THE fiftieth annual convention of the National Association of Railroad and Utilities Commissioners was called to order at the Roosevelt Hotel, New Orleans, La., on the morning of November 15th by its then President Alexander M. Mahood, member of the West Virginia commission. After an opening invocation by the Most Reverend Joseph F. Rummell, S. T. D., Archbishop of New Orleans, the convention was welcomed on behalf of the state of Louisiana by Chairman Wade O. Martin of the Louisiana Public Service Commission, and on behalf of the city of New Orleans by Fred A. Earhart, city utility commissioner. Responses were made for the association by its then first vice president, Commissioner Nelson Lee Smith of New Hampshire.

The president's address by Commissioner Mahood touched on the various major developments in the field of regulation during the last year in which the association was directly concerned or interested. The speaker stressed the value of coöperation between Federal and state commissioners.

The afternoon session of the first day was given over to a discussion of the Lea Act passed by Congress last June to regulate the transportation and sale of natural gas in interstate commerce. The discussion was led by Thomas Fitzhugh, chairman of the Arkansas commission, John J. D. Preston, chairman of the West Virginia commission, and Claude L. Draper, member of the Federal Power Commission. At this meeting a report of the Committee on Statistics and Accounts of Public Utility Companies (relating to the proposed revised uniform system of accounts for gas companies) was presented and accepted by the association. The committee was under the chairmanship of Dr. E. W. Morehouse, director of the Rates and Research Division of the Wisconsin commission. Commissioner Moie Cook of Indiana read a report of the Committee on Valuation in the absence of its chairman, Ernest I. Lewis, director of valuation for the ICC.

The morning session of the second day witnessed a lively discussion on the railway transportation problem, led by Homer Hoch, member of the Kansas commission. This discussion disclosed sentiment among the state commissioners which resulted in the presentation on the following day by First Vice President Nelson Lee Smith of a resolution placing the association on record as opposed to any congressional legislation which would make any single factor the dominant one in the fixing of railroad rates or which would deprive either the state commissions or the Interstate Commerce Commission of its rate-making powers.

Commissioner Hoch in supporting this resolution stated that it was aimed at a proposal of the American Railway Association that the ICC should be directed to give primary consideration to the revenue needs of carriers and otherwise curtail regulatory discretion of the state and Federal commissions. It was during the morning session of the second day that Chairman Walter M. Splawn of the Interstate Commerce Commission, speaking on Federal railroad regulation, urged the creation of a Federal department of transportation with authority to coördinate all forms of transportation and preserve the usefulness and assets of existing agencies.

The association's committee on Motor Vehicle Transportation, however, indicated that the state commissions are chary of any extended restriction of transportation, the report stating that "promotion, preservation, and coördination in the interest of the public require that rail, water, air, and highway transportation be regulated individually in each respective field."

In the afternoon session of the second day Commissioner Paul A. Walker of the Federal Communications Commission addressed the association on coöperation between state and Federal commissions. The speaker expressed the hope that the day would come when Federal commissions would find themselves in a position, physically and financially, to furnish systematic aid to the state commissions on all problems of mutual regulatory concern. He cited several examples of such assistance which the FCC has already given to the states.

It was at this session that discussion of motor carrier problems and jurisdictional questions was held under the leadership of Commissioner H. Lester Hooker of Virginia. Reports were made for the Committee on Motor Vehicle Transportation, under the chairmanship of Frank E. Southard, chairman of the Maine commission. The report of the Committee on Coöperation between State and Federal Commissions, under the chairmanship of John J. Murphy, chairman of the South Dakota commission, and the report of

the Special Committee on Uniform Motor Freight Classification, under the chairmanship of Edwy L. Taylor, chairman of the Connecticut commission, were also presented.

Opening the third morning session, held Thursday, November 17th, First Vice President Nelson Lee Smith, as chairman of the Executive Committee, presented the report of the committee upon resolutions introduced in convention. This included the resolution, noted above, affecting railroad rate making which was subsequently adopted by the convention.

John E. Benton, general solicitor of the association, led a discussion concerning recent decisions of the United States Supreme Court relating to the procedure and jurisdiction of the state commissions. Dr. Paul J. Raver, executive officer of the Illinois Commerce Commission, made the report of the Committee on Progress in Public Utility Regulation. The report of the Special Committee on History of and Current Developments in Regulation, under the chairmanship of Commissioner John L. Collins of Connecticut, was also presented.

The afternoon session of the third day was given over to a general discussion of public utility finance. It was notable for the optimistic report on utility financing, presented by Commissioner George C. Mathews of the Securities and Exchange Commission. Touching on the reorganizations by the SEC under the Holding Company Act, Commissioner Mathews said that the SEC is trying to observe the spirit of the reorganization provisions with respect to geographical integration and corporate simplification of utility holding companies without becoming fettered by "cold legal formulae."

The report of the Special Committee on Public Utility Finance, under the chairmanship of Dr. W. C. Fankhauser, financial expert of the California commission, was presented. The report of the Special Committee on Depreciation, under the chairmanship of A. R. Colbert, accounting and finance chief of the Wisconsin commission, attracted widespread, favorable comment for its thoroughgoing analysis of the depreciation problem in regulation. The report, generally, stressed the necessity for consistency in the respective treatments of accrued and annual depreciation.

On the concluding day of the convention there was an interesting discussion on the progress in regulation of rates and service in which a number of the commissioners and visiting delegates took part. The report of the Committee on Public Utility Rates, under the chairmanship of Charles E. Byrne of Illinois, a report of the Committee on Generation and Distribution of Electric Power, under the chairmanship of James M. Slattery, chairman of the Illinois commission, and a report of the Special Committee on Rural Electrification, under the chairmanship of Ferd J. Schaaf of the Washington commission, were presented.

The executive committee announced before the conclusion of the convention that the next meeting of the association would be held in Seattle, Wash., on October 22nd to the 25th, 1939. Following the convention, more than half of the delegates and guests left on a 2-day tour of southern Louisiana as guests of the Louisiana Public Service Commission.

Nelson Lee Smith of the New Hampshire commission was unanimously elected president of the association to succeed President Mahood. Harry Bacharach, president of the New Jersey commission, was elected first vice president over Ray C. Wakefield, president of the California commission, after a rather close contest. Commissioner James W. Wolfe of South Carolina was unanimously elected second vice president. John E. Benton, general solicitor, Clyde S. Bailey, secretary, and Robert E. May, assistant secretary, were all unanimously reëlected.

A new panel of coöperators and alternates was elected for the following geographical regions:

Eastern region: Coöperators, Claude Swain, New Hampshire, and Andrew Nelson, Illinois; alternates, Moie Cook, Indiana, and Frank J. Reardon, New Jersey. Southern region: Coöperators, Wade O. Martin, Louisiana, and M. L. McWhorter, Georgia; alternates, Jerry W. Carter, Florida, and Robert E. Webb, Kentucky. Western region: Coöperators, J. J. Murphy, South Dakota, and John S. Boyer, Missouri; alternates, Fred S. Hunt, Wisconsin, and W. M. Maupin, Nebraska. Mountain-Pacific region: Coöperators, Malcolm Erickson, Colorado, and Ward C. Holbrook, Utah; alternates, Ray L. Riley, California, and Will M. Lynn, Wyoming.

Utilities Face Tax Probe

PRESIDENT Roosevelt, by executive order, on November 15th authorized the joint congressional committee investigating the Tennessee Valley Authority to inspect income and excess profits tax returns of private utilities.

The executive order was written in general terms to permit inspection of returns for calendar years up to and including 1937. TVA Committee Counsel Francis Biddle said that the order was designed to permit the investigators to assemble information bearing on valuation of private utility properties.

Mr. Biddle indicated that a portion of the information assembled from the returns would be brought out when private utility executives testified before committee hearings. The executive order was published as the TVA investigators resumed hearings last month, receiving a defense of TVA operation in reports from five officials of the agency.

Explaining the purpose of the investigators in scrutinizing the tax returns, Biddle said the information was expected to show the depreciation of private utility properties and provide data for use in study of a fair basis

of exchange in the acquisition of private utility holdings.

The reports of the five TVA officials, elaborating a defense of the authority's operations, went into the committee record over protest of Representative Wolverton, Republican of New Jersey. Wolverton sought to block their introduction but was overruled by Committee Chairman Donahey, Democrat of Ohio. After losing in the move, Wolverton served notice that he would request that each of the five TVA officials who presented reports be called for cross-examination, to which Donahey agreed.

The reports outlined in detail the ramifications of the New Deal's power and regional planning agency. They denied that any attempt was made "to superimpose an inflexible physical plan of the valley, to circumscribe a field of economic activity, or to regulate in any manner the lives of the valley's residents."

Utility Study

THE Twentieth Century Fund announced last month that it would undertake a "nonpartisan" appraisal of the relation of the Federal government to the electric power and light industry. A special committee, headed by J. Henry Scattergood, formerly a member of the Pennsylvania Public Service Commission, has been appointed by the fund to deliver a report on its findings.

In a letter to the committee outlining the scope of the project, Evans Clark, director of the fund, said the purpose would not be the mere "exposure of evils which have been so often and so effectively exposed during the past few years, but the development of sound and constructive future policies."

Limitation of time and funds, Mr. Clark indicated, would make impossible the collection of new statistics and information from primary sources. The existence of masses of such information, as a result of the various government investigations and the studies of official agencies, would make the collection of new data unnecessary, Mr. Clark said.

He added that what was needed "for popular understanding of the issues involved is a condensed but accurate picture of the present status of the utility industry, both public and private, of its geographic and financial organization, of its rate structure, investments, operating costs, and ratios."

Special emphasis will be placed on the following points: (1) Changes that have occurred in the last few years; (2) the relation between publicly and privately owned utility systems; (3) their comparative operating costs and their effects on each other; (4) recent developments in Federal and state regulation of the industry.

Adjustments listed by the fund as now taking place include lowering of rate schedules, corporate reorganizations, geographic regrouping of operating companies to meet the requirements of legislation, readjustment of private utility systems in many regions to the realities of public competition, and the development of new and improved generating capacity by both public and private interests.

Members of the special committee, in addition to Mr. Scattergood, include William L. Blatt, James C. Bonbright, Larue Brown, Murray D. Lincoln, Charles O. Rose, and Paul L. Schoellkopf.

Complete TVA Power Plans

THE list of municipalities in the Tennessee valley area that have completed plans to become TVA power consumers and distributors numbered 88 on November 15th following the conclusion of a deal involving 22 west Tennessee communities.

With the approval of their boards of aldermen, the mayors of Jackson, Brownsville, Humboldt, and Ripley signed contracts on November 14th for the purchase of the electrical facilities of the West Tennessee Power & Light Company for $1,600,000. John Wisdom of Jackson, president of the utility, announced the sale, saying "the company intends to do everything proper to see that the transactions covered by the contracts are carried out as soon as possible." The company on November 17th asked the Federal Power Commission to waive a formal hearing on the transfer to expedite the sale.

Mr. Wisdom said the contracts would be sent to TVA officials for their signatures. The authority participated in the deal, acquiring rural transmission lines which will be sold later to coöperatives.

The four contracting cities will distribute power to 18 other towns and communities in their vicinities.

In a conference at Memphis on November 4th the utility agreed to sell its electric properties providing three towns also purchased waterworks owned by the company. The board of aldermen of Halls rejected the proposal to buy its water plant, jeopardizing the entire deal. Officials of other towns hastened to persuade the board to change its stand.

The West Tennessee Power & Light is a property of the National Power & Light which recently sold its Knoxville system and has a deal pending for the sale of the Memphis system for $13,500,000.

Right to Challenge TVA Questioned

A GOVERNMENT attorney contended before the U. S. Supreme Court on November 15th that 14 utility companies have no right to bring a legal challenge of the Tennessee Valley Authority's power program.

John Lord O'Brian, special TVA counsel, asserted that the only competition that would damage the companies was from municipalities

and coöperatives to which the TVA power is sold. He said "such competition does not involve legal injury."

O'Brian, who was a Republican candidate for Senator from New York in the election last month, said the high tribunal had ruled last January 3rd that utilities could not challenge Public Works Administration loans and grants for the construction of publicly owned power projects.

The justices took the case under consideration.

Public Ownership Urged

A RECOMMENDATION by the first Pan American Congress of Municipalities, which met in Havana last month, to place before the coming Pan American Conference in Lima, Peru, proposals aiming at the termination of private ownership of public utilities in the nations of the Americas, was agreed upon by the congress's third commission on November 17th.

The resolution of the commission declared that all large centers of population should be served by public services owned by the municipality, state, or nation. When the authorities deem this inadvisable, the commission recommended, private companies shall be permitted to render the service if they are organized under the laws of the country and are subjected to technical, economic, and financial inspection in order to fix rates, curb profits to 6 to 7 per cent of the invested capital, and limit concessions to a period of not more than twenty years.

It would be preferable, the commission asserted, to grant concessions "without a specified period," paving the way for expropriation at prices based on actual prudent investment less depreciation.

The commission declared that these recommendations had been drawn up after hearing reports by William S. Mosher, director of the Syracuse School for Citizenship; Dr. John Thurston, professor of political science at Northwestern University, Chicago, and Delegates Hector Inigo of Buenos Aires and Julian Devis Echandia of Bucaramanga, Colombia.

At a former meeting, Inigo Carrera, Argentine delegate and the president of the committee, eulogized the good neighbor policy of the United States. He went on to say that spoliation of the Argentine public by public utilities, many of which were American-owned, was still a small cloud on the horizon. Referring to President Roosevelt's fight against holding companies he affirmed that Argentina greatly desired to follow in the footsteps of the President of the United States in strictly regulating public utilities.

Dr. Lindsay Rogers, professor of public law at Columbia University, speaking on economic and administrative problems of subway transport, described New York's problems and asserted that "everywhere it is now clear that subways—and, indeed, other forms of rapid transport—cannot be left to private enterprise."

A report by Richard Aldworth, manager of the Newark airport, on municipal ownership, operation, and regulation of airports, recommending that governments assume control of all airports, was approved.

Norris Seeks Four Projects

U. S. Senator George W. Norris, the "father" of the Tennessee Valley Authority, told interviewers at Memphis, Tenn., last month that he would propose to the next Congress a program similar to the TVA for the river valleys of the Missouri, White, Colorado, and Columbia.

The Senator was touring TVA projects and would visit the dams at Pickwick, Whiteville, Wilson, Guntersville, and Chickamauga, it was said. He stated:

"I expect to see the White and Black rivers, in eastern Arkansas, converted into power-producing streams. The great agricultural section within their valleys should be granted the opportunity of cheap electricity.

"Despite my retirement from active politics (he declared he would retire from the Senate in 1942), I shall continue to devote my time to advocating a nation-wide system of cheap electrical distribution."

Utility Taxes Clarified

THE Internal Revenue Bureau on November 18th issued regulations covering amendments made to the last Revenue Act upon recommendation of the Securities and Exchange Commission regarding the non-recognition of gain or loss upon exchanges and distributions made in obedience to orders of the commission under the provisions of the Public Utility Holding Company Act, and the basis of property acquired upon such exchanges and distributions.

The regulations are intended to clarify the operation of the provisions of the act, which were adopted to prevent utility companies from being penalized by taxes for any transactions which they must carry out in observance of moves made in connection with simplification of capital structures and geographical integration of holding companies.

District Vote Split

FOURTEEN counties in Washington which voted last month on formation of public utility districts for the distribution of electricity from Bonneville and other government and municipal projects divided evenly on the question, 7 voting for districts and 7 against, almost complete returns revealed recently.

Only one Oregon county, Wasco, voted on formation of a utility district, and the vote there was negative—1,597 for and 1,954

against. The city of Monmouth, however, voted to go into the power business and issue revenue bonds, 266 to 53.

In Wasco rural areas voted in favor of the public utility district, but a heavy negative vote was rolled up in The Dalles, Dufur, and Mosier. This brought speculation that the rural sections may attempt to form their own district—a plan which failed previously in Oregon's 7-county utility district election.

Formation of 7 new utility districts in Washington will bring the total of county-wide utility districts in that state to 25, since 18 were already established. In that state a utility district may issue revenue bonds to build or buy transmission systems. In addition, three small districts exist in Washington.

Complete and incomplete returns showed the following new districts in Washington: Clark, Klickitat, Skamania, Grays Harbor, Thurston, San Juan, and Grant. With the exception of San Juan, all these counties are adjacent to or in the immediate potential field of Bonneville dam service.

Returns indicated that utility district proposals were beaten in Yakima, Walla Walla, Columbia, Adams, Island, rural King and Kitsap counties. Only Yakima of this group is in the Bonneville transmission area.

A mix-up on the ballot in Clark county's district vote brought a possibility that the result may be challenged in court.

REA Enters Canada

THE Rural Electrification Administration revealed recently that the services of an REA-financed project in Boundary county, Idaho, were extended across the international line into Canada to a customs office and to the homes of five customs officials, at Eastport and Forthill.

The REA said that the only expense to the Idaho coöperative was the purchase and installation of three master meters on as many poles on the United States side of the lines where the service lines go to the border customers.

The Canadian customers paid their membership fees in the coöperative but did not receive certificates of membership because of legal difficulties, the REA said.

Power Plant for Quebec

IMMEDIATE establishment of the Quebec government's projected 26,000-horsepower electric plant on the Upper Ottawa was decided on last month during a conference between Premier Duplessis and members of the province's Electricity Syndicate.

Practically the entire output of the plant already has been contracted for by mining companies in Quebec's northern Abitibi region. The hydraulic power development will be the first step in Quebec's production of electricity under state control, planned when the Provincial Electricity Syndicate, headed by S. A. Baulne, was formed approximately two years ago.

The syndicate has conducted research into costs and methods of electricity production and sounded power markets afforded by the mining industry.

Alabama

Demand TVA Taxation

TAXATION of TVA on the same basis with private utilities and restriction of its operations to its present north Alabama territory were recommended to the Jefferson county legislative delegation meeting in Birmingham last month, as a quadruple blast was fired at the government-subsidized power authority by the coal industry, school forces, mine workers, and organized railroad brotherhoods.

Not only was it urged that a kilowatt-hour tax be collected by the state from TVA for the sole benefit of the schools, to make up the revenue loss resulting from removal of thousands of acres of land now used by the authority from the tax rolls, but it was recommended the delegation use its influence in a move for Congress to compel TVA to assess its properties for city, county, and other state taxes.

Florida

Acquitted in Bribery Case

A CRIMINAL court jury on November 18th acquitted Mayor Robert R. Williams, City Commissioner John W. Dubose, and Thomas E. Grady, rate expert, all of Miami, of charges of soliciting a $250,000 bribe from the Florida Power & Light Company.

The three defendants were charged by the state with soliciting the bribe from the utility to compromise rate litigation.

Bryan C. Hanks, president of the utility company, precipitated the prosecution last spring with a newspaper advertisement headed "I won't pay a bribe." He was the state's star witness.

Kentucky

Retains Gas Rate Rights

THE state public service commission on November 14th was informed by the city of Louisville, in a letter from Mayor Joseph D. Scholtz, that it does not approve gas and electric rates authorized by the state commission November 1st for Louisville. The letter said:

"We noticed in the Louisville newspapers, under date of November 2nd, a statement of the Louisville Gas & Electric Company that the company has put into effect as of November 1st, certain new schedules of gas and electric rates. The city desires to go on record as not having approved these rates. It reserves all of its rights with respect to them. The city reiterates its position with regard to the franchise controversy which is now pending between the city of Louisville and the Louisville Gas & Electric Company.

The city contends that the company does not have a perpetual electric franchise. C. C. Webb, head of the bureau of research and service, said the city planned to check the rates of customers to note the effect as soon as the company furnished the data. The electric rates were reduced by the state commission and the gas rates raised slightly.

A net saving of about $250,000 a year was estimated as a result of the rate changes, it was said.

Maryland

Commission Files Reply

THE state public service commission last month filed an answer in the Anne Arundel County Circuit Court defending its right to forbid Jerome M. and Evelyn Lichtenberg and Vernon Snyder from transporting Baltimore WPA workers to the Naval Academy in trucks.

The Lichtenbergs and Snyder previously petitioned for an injunction restraining the commission from interfering with their contract with the Navy Department. They alleged the action of the state commission violated the guaranty of contract and also said the commission had no jurisdiction, as the contract was with an agency of the Federal government.

The Lichtenbergs and Snyder said they rented their trucks and drivers at a flat rate of $12 a day to haul WPA workers from their homes to the site of the $6,000,000 improvement project at the Naval Academy.

The state commission's answer, filed by J. Purdon Wright, counsel, argued that the trucks are fitted with 40 seats, and that they operate on a fixed schedule and charge 30 cents per passenger, and hence were within the jurisdiction of the commission.

Opposing counsel took a different view of the money received by the truck operators for the use of their trucks. The commission counsel referred to the remuneration as fares, and the truck owners' attorneys said it was a flat rental fee.

The controversy arose when the commission issued an order forbidding the truck owners to haul the WPA workers as a violation of the Baltimore & Annapolis Railroad franchise. (See PUBLIC UTILITIES FORTNIGHTLY, November 24, 1938, page 732; also page 403, P.U.R. section of this issue.)

Massachusetts

New Schedule Filed

A NEW schedule of general rates for domestic and commercial use of gas was filed last month with the state department of public utilities by the Boston Consolidated Gas Company. E. M. Farnsworth, president, stated that this action was virtually a continuation of previous efforts which terminated in July when the utilities department disallowed a rate schedule filed on January 15th.

The July decision contended that the schedule in question, containing gross and net rates, provided for a charge "as or in the nature of a penalty." In its ruling, however, the department of public utilities also stated that no decision had been made on the "merits" of the case.

The new rate schedule is as follows: First 100 cubic feet per month, 60 cents per 100 cubic feet; next 600 cubic feet, 20 cents; next 800 cubic feet, 10 cents; next 23,500 cubic feet, 8 cents; next 75,000 cubic feet, 7½ cents; over 100,000 cubic feet, 6 cents.

The general schedule in effect which the new rates would replace was 60 cents for the first 100 cubic feet, 10 cents per 100 for the next 99,900 cubic feet, and 8 cents per 100 for all over 100,000 cubic feet, with a minimum bill of $7 for any 12-month period.

Nebraska

Takes Over Power System

COZAD on November 15th became the first city to acquire its electric distribution system under terms of the proposed statewide grid by which Nebraska hydroelectric districts and municipalities hope to monopolize the state's power industry.

The city took over the Western Public Service Company, having paid $60,000 for the facilities. This was the first step toward a municipal power plant and distribution system, and the other sections will be worked out as soon as construction can be completed, according to recent reports.

It is planned to build a plant sufficiently large to house four large Diesel engines, one of which will be installed as soon as the building is completed to be used as a standby plant. Current will be supplied by the Western Public Service Company until expiration of its franchise in the early part of 1940. The distribution system will be rebuilt in many parts of the city.

New York

Constitutional Amendments Voted

NEW York voters last month approved a new state Constitution which includes a prohibition against the enactment of any legislation designed to restrict the earnings or profits of municipal utility plants. The amendment is as follows:

"To prevent the legislature from prohibiting any municipal corporation operating a gas, electric, or water public utility service from making and receiving, in addition to an amount equivalent to taxes which would be payable to such municipal corporation by such service if privately owned, a fair return on the value of the property used and useful in such service, over and above costs of operation and necessary and proper reserves, or prohibiting the use of the profits therefrom for the payment of municipal expenses or obligations or the payments of refunds to consumers."

The cause of rapid transit unification in New York city was substantially advanced by the approval in the November 8th election of Amendment No. 9 to the New York state Constitution. The amendment gives the city of New York authority to issue $315,000,000 bonds outside its debt limit to be applied toward purchase of the properties of the Brooklyn-Manhattan Transit Corporation, the Interborough Rapid Transit Company, and the Manhattan Railway Company systems. The small margin by which the proposed bond issue falls short of the indicated purchase price of the lines (possible $320,000,000 to $340,000,000) will be made up by additional borrowings under the existing debt limit.

North Carolina

Power Rates Cut

SWEEPING reductions in power rates for municipalities and counties in northeastern North Carolina were seen recently in an agreement made by the Virginia Electric & Power Company with the state utilities commission.

The new schedules, effective next January 1st, will save cities 66 per cent of their power costs and eliminate "standby" charges for counties. The Virginia Electric & Power Company serves the northeastern part of the state.

Municipalities will be able to buy current for all purposes at one cent per kilowatt hour, provided they accept a 10-year contract, Utilities Commissioner Stanley Winborne explained.

Counties will get a flat rate of two cents per kilowatt hour under the same contract, he said, and the power company will allow all meter readings to be consolidated into a single bill.

Oklahoma

Phone Hearing Set

JUDGE Edgar S. Vaught on November 9th summoned a 3-judge Federal court to convene at Oklahoma City December 19th to pass on the application by the Southwestern Bell Telephone Company for a restraining order against the state corporation commission to

clear obstacles from a projected increase in rates in 14 state cities.

The court, including Judge Vaught, will be headed by Judge Robert L. Williams of the circuit court of appeals, with Judge A. P. Murrah as third justice. The 3-judge court is necessary because the utility invoked the Constitution by alleging the state corporation commission's refusal to grant application for temporary increases pending a final hearing was "void, arbitrary, and unconstitutional."

The cities affected are Ada, Ardmore, Blackwell, Chickasha, El Reno, Guthrie, Lawton, McAlester, Norman, Okmulgee, Ponca City, Sapulpa, Shawnee, and Stillwater, where, the company alleged, it was unable to make a "reasonable profit on its intrastate service." The utility had proposed new rates varying from $4 to $5.50 for business telephones, and $1.85 to $2.75 for residential service.

Oregon

Bonneville Power Pact

A CONTRACT between Eugene and Bonneville whereby the city would purchase power when it is ready for delivery in Eugene was being drawn up by Bonneville authorities following a conference on November 14th between officials of that organization and the Eugene water board, J. W. McArthur, superintendent of utilities, announced recently.

Details of the contract including the rates to be charged Eugene were not made public pending final approval on the part of the Federal Power Commission. Members of the water board said the contract as outlined by Bonneville would be satisfactory to Eugene providing the Federal Power Commission agreed to the rate schedule.

Pennsylvania

Ripper Legislation

A STATE public utility commission "ripper" law was seen by Republican leaders recently as one of the first legislative objectives of the incoming Republican administration. The Democrats ousted the Republican-appointed public service commission in 1937 and set up their own regulatory body. A repetition of this action by Republican forces was regarded as a distinct possibility, it was said.

Several hitches in the procedure were seen, however. The Republicans control the house but lack a majority in the senate by a 24-26 count. A "ripper" law could be enacted by a mere one-vote majority, but confirmation of the new commission would require a two-thirds Senate vote.

The state public utility commission, as it now stands, is headed by Chairman Dennis J. Driscoll, and includes Commissioners Richard J. Beamish, Arthur Colegrove, Donald Livingston, and Thomas Buchanan. Colegrove has been on the commission only a short time. Beamish was chief counsel of the old public service commission and stepped up to the commissionership in the present set-up.

Beamish and Buchanan drafted the regulatory act of 1937 which placed the burden of proof in rate cases on the utilities, authorized the imposition of temporary rates, and required utilities to pay commission expenses.

South Carolina

Rate Hearing Fixed

THE state public service commission last month set December 6th as the date for the beginning of an investigation into electric rates charged by the South Carolina Electric and Gas Company.

In setting the date for the start of hearings, the state commission also expanded the case to embody the issue of payments by this company to its parent corporation, the Associated Gas and Electric Company, through other affiliate companies. The state commission had ordered into effect rate reductions by the South Carolina Electric and Gas Company which would produce an annual aggregate saving to the company's customers of slightly more than $500,000, effective November 1st. The hearing having been granted, this was suspended.

In the recent order granting the hearing, the state commission required that its electric utilities division and the company be prepared to present on December 6th evidence on all questions involved except those having to do with contentions as to what it would cost to reproduce the company's electric properties and having to do with depreciation.

Texas

Withdraws PWA Application

DECISION to withdraw its PWA application for a municipal electric light plant and to continue to receive service from the Texas Power & Light Company was made last month by the Wylie (Collin county) city council. Wylie had voted in favor of a municipal system on September 29th.

The Texas Power & Light Company has served Wylie since 1916 and since that time has reduced residential electric service rates eight times, it was said. The consumer using 50 kilowatt hours a month in 1916 paid $7.10 while today he pays $3.21, a cut of 55 per cent.

Three More Dams Asked

AT a conference between members of a Texas delegation and Secretary of the Interior Harold L. Ickes, Public Works Administrator, held in Washington last month, the PWA was asked to make allotments for three additional dams in the Brazos river flood control district between the Possum Kingdom dam in Palo Pinto county, now under construction, and Waco.

The amount involved is a total construction of $15,000,000, of which only $6,750,000, or 45 per cent, would be a grant, and the rest a loan which, if not available from the PWA, may be borrowed from the Reconstruction Finance Corporation. It was well known that all of the $735,000,000, the net amount voted to PWA in the spend-lend legislation, has been placed or allocated, and that the only hope of obtaining new allotments was from projects allotted for and then abandoned.

The three dams proposed and their approximate costs were de Cordova Bend, Hood county, $3,500,000; Bee Mountain, Bosque, and Johnson counties, $4,950,000; Inspiration Point, Palo Pinto county, $3,025,000.

Utility Accepts Offer

MAYOR Grover S. Shade announced last month that the Texas Public Service Company had accepted the offer of the city of Smithville for the purchase of the electric light and power system and the waterworks system there.

The price was $210,000, plus assumption by the city of all uncollected bills and accounts receivable.

Mayor Shade said the city would purchase power from the Colorado River Authority when that utility becomes available.

Utah

Commission Builds Surplus

ALL state departments were reported last month to be keeping within their incomes, but one department was said to be doing better than that—it was accumulating a surplus.

The department was the state public service commission, and the condition of its finances was revealed in a letter sent last month by its chairman, Ward C. Holbrook, to E. R. Miles, state budget director.

Mr. Holbrook estimated that in the department's general fund there would be a surplus at the end of the biennium on June 30th of $30,784.10.

The attorney general held that since part of this had been collected from the utilities themselves, under provisions of a state legislative act, it could not revert to the state general fund, as is the case with unused balances in other departments. For this reason it will be carried as a surplus into the next biennium, and will make it possible for the coming legislature to reduce the state commission's appropriation for the new biennium to $100,000. In the last biennium it was $134,550.

Washington

Asks Phone Rate Quiz

GOVERNOR Clarence D. Martin last month received a resolution of the Seattle Chamber of Commerce calling for a thorough investigation of the Pacific Telephone and Telegraph Company's proposed rate structure revision for Seattle and its suburbs.

Through its board of trustees, the chamber recommended that, if necessary, the governor recommend to the state legislature that sufficient funds be appropriated for an "exhausting and thorough" investigation of the company's proposal. The resolution stated:

"In view of the fact that a large part of the population of the state will be affected by such changes and apparently will be faced with increases in the cost of their telephone service, the Seattle Chamber of Commerce urges upon the governor of the state of Washington the necessity for careful investigation and study of said proposal."

The Latest Utility Rulings

Federal Court Review of Commission Rate Decision

A FEDERAL court of three judges, in an injunction suit by the Pacific Gas and Electric Company against the California commission, sustained rate reductions ordered by the commission for the purpose of distributing impounded funds. During the progress of the litigation the company had consented to the reduction of rates for the future.

The court expressed its view of the functions of a Federal court reviewing such an order as follows:

> While it is quite true that the Federal courts, in determining questions of confiscation in violation of the Fourteenth Amendment, exercise their own independent judgment as to the facts and may disagree with the factual conclusions of the rate-fixing body, it cannot disregard such findings. It has become clearer in later decisions of the Supreme Court that due respect must be paid to the judgment of the rate-making body where its conclusion of fact must necessarily result from the exercise of its judgment upon conflicting evidence. While in a technical sense the court, in considering a rate alleged to be confiscatory, exercises its own independent judgment on both the facts and the law, and does not sit as a reviewing court, it is in essence called upon to pass upon the judgment of the rate-making body, and some consideration must be given to its decision in the region in which fair and independent judgment may be exercised by those charged with the duty of ascertaining the facts (Note 1), and where that judgment has been fairly exercised and the result is reasonable, the court sufficiently discharges its duty to exercise its own independent judgment by finding the result arrived at by the rate-making body to be reasonable. The finding of the rate-making body should always be in focus when the evidentiary facts are considered.

In view of the fact that the company had been allowed large amounts for promotion and advertisement and had built up its going concern value entirely from the proceeds derived from its customers while conducting its business at a profit, and in view of the further fact that the going concern value was necessarily reflected to a large extent in the valuation of every part of its property, all of which was valued as a part of the system, the court held that a relatively small additional amount should be allowed for going concern value. It allowed the unamortized portion of cut-over expense incurred in prior years to be included in going concern value instead of in the operating expense.

Standby gas generating plants, to the extent that they were no longer used or useful for public purposes, it was held, should no longer be included in the capital structure of the company. This company had changed from artificial gas to natural gas service, with a consequent retirement of investment in existing gas plants.

The court stated that both reproduction cost and original cost should be considered in arriving at fair value, which is the proper basis for rates. Nevertheless, it held that it was not unreasonable for the commission to allow the company in its rate base the actual cost of the cast iron pipe system rather than the lesser cost of laying new steel pipe with welded joints, or the cost of reproducing the cast iron system new, particularly since allowance had been made in part for the cost of modification of the present system by the expenditure of several millions to equip the cast iron joints to carry natural gas. On this question, the court stated:

> If we bear in mind that neither historic cost nor reproduction cost is conclusive evidence of value for a rate base and that both should be considered in arriving at the fair rate base, we cannot say that the commis-

sion erred in its conclusion to accept historic cost as to the transmission system. The same proposition is involved in the manufacturing plants where there is a difference of $1,000,000 in the cost to reproduce new and in the historic cost. This is particularly true in view of the evidence that the plants could be replaced by a new plant equally effective with a saving of from $5,500,000 to $8,500,000.

A return allowance of 6⅜ per cent on the rate base was held to be nonconfiscatory. *Pacific Gas & Electric Co. v. Railroad Commission of California.*

Regulation of Mechanical Power Furnished by Electric Company to Industry

THE Niagara Falls Power Company was required by the New York commission to file a service classification and a schedule of rates for service provided for the Aluminum Company of America under contract. These contracts involved the leasing of power company land at Niagara Falls to the industrial company and the furnishing of mechanical power by connection of the power company's turbines to generators owned by the Aluminum Company.

Objection to the exercise of jurisdiction over these transactions was raised by the industrial company, but the commission ruled that both the Public Service Law and the Conservation Law conferred jurisdiction upon it to regulate the furnishing of service, facilities, and power provided for by the contracts. The commission said that the statute confers jurisdiction over "all power" generated by the use of diverted waters in which the state has a proprietary interest. Various bases for challenging the jurisdiction of the state commission were overruled. *Re Niagara Falls Power Co. (Case No. 9186).*

Leased Telephone Circuits for Furnishing Gambling Information

AS the result of an inquiry by the Pennsylvania commission concerning the use of leased telephone wires for the dissemination of gambling information from race tracks, an order was entered directing the Bell Telephone Company of Pennsylvania to cease and desist the rendering of service to places having telegraph or telephone connections with the race track circuits of Nationwide News Service, Inc., or any of its subsidiaries.

It was also ordered that the company might file with the commission a list of subscribers to whom it desired to render leased wire service, which service would not offend the spirit of this order. Such information would include a statement of the occupation and location of the subscriber, a description of his facilities, and a statement that an affidavit had been filed that such subscriber was not engaged in any unlawful activity.

The commission made the finding that the Nationwide circuit was principally engaged in supplying information used for unlawful purposes, in violation of the gambling laws of the commonwealth of Pennsylvania. It further found that the American Telephone and Telegraph Company had directed the Pennsylvania company to install facilities for this purpose and that the state company had knowingly supplied its facilities in furtherance of these unlawful purposes.

A representative of the telephone company stated that the company would be willing to abide by any lawful order of the commission, that if lawful authority says the company has to get rid of this type of business the company would be only too glad to do it, but that the company did not think it should assume the burden or responsibility of policing all telephones or acting as a censor of tele-

phone service. He expressed the view that it would be dangerous if the company's employees were entitled to say to anyone, you cannot have a telephone.

The commission said that there was no question that it was the duty of the telephone utilities to render service indiscriminately. But, it continued:

> . . . the law is clear that a utility is permitted to refuse service to those whom it knows are violating the law. We have heretofore found in this order that the drops furnished by respondent from the American Telephone and Telegraph race track circuit, were contracted for by Nationwide, and in violation of the law of this commonwealth.

The inability of the state commission to settle the question effectively because of interstate use of line was recognized, and the commission urged the coöperation of the Federal Department of Justice and the Federal Communications Commission.

Finally, the commission appealed to the Congress of the United States for the enactment of a statute which would uproot "this nation-wide evil which is taking millions of dollars in gambling from the homes of America and from the channels of lawful trade." *Pennsylvania Public Utility Commission v. The Bell Telephone Co. of Pennsylvania (Complaint Docket No. 12589).*

Unconstitutional Statutory Provision Held Invalid in All Its Parts

A REPERCUSSION from the decision by the Pennsylvania Superior Court in Northern Pennsylvania Power & Light Co. *v.* Public Utility Commission (1938) 24 P. U. R. (N. S.) 443, 200 Atl. 866, in which it was held that §202 (e) of the Public Utility Law was unconstitutional, was felt by the Philadelphia Steam Company when its application for approval of an extension was denied by the Pennsylvania commission for lack of jurisdiction.

The statute under consideration authorizes property transfers and extensions of plant or facilities upon obtaining a certificate of public convenience and necessity from the commission. A provision is added that the commission may exempt any class of construction, installation, or improvement or any class of property from the provisions of this paragraph. The court held that since the legislature had declared no policy, established no standard, laid down no rules to govern the commission, and the whole matter of exemption was left to the arbitrary will of the commission, controlled by no chart or compass, the proviso clause was so broad as to be invalid. The commission said that if this proviso made the property transfer provision invalid, it also made the extension provision invalid.

Although one who files an application for approval could not attack the jurisdiction of the commission by averring that the section under which its application is filed is unconstitutional, nevertheless, since the statute had been declared unconstitutional, the commission ruled that it must take judicial cognizance of that fact and refuse to consider applications submitted to it under a statutory provision which is unconstitutional. *Re Philadelphia Steam Co. (Application Docket No. 50862).*

Fair Hearing When New Commission Continues Pending Cases

A PETITION for rehearing and reargument of a case involving the refusal of an electric company to furnish single point delivery of electricity under wholesale light and power rates, reported in 23 P.U.R. (N.S.) 178, was denied by the

Pennsylvania commission on the ground that all the points of contention were exhaustively reviewed and that the conclusions reached definitely supported the commission's finding, and that the complainant was not deprived of its right to have its case heard and to argue its position before the tribunal which disposed of the matter, although the public utility commission had continued the case after the superseded public service commission had heard the case.

The contention was advanced that the complainant had not been given a hearing measuring up to the requirements of the due process of law. The public service commission had gone out of existence without disposing of the complaint, and the public utility commission, taking jurisdiction of all cases undisposed of and pending before the public service commission, had made its decision on the record. Attention was directed to the fact that the present commission was in legal existence almost a year from the time of its creation before issuing its decision. During this time the complainant had ample opportunity to request oral argument, but no such request had been made.

Since the complainant had chosen to take its chances on a favorable decision, it was held to have been deprived of no right and to have been denied no hearing fully measuring up to the requirements of due process of law when the commission's report and order appeared to go contrary to the complainant's hopes and contentions. It was said that a sustaining of the complainant's position as to deprivation of right and lack of due process would be tantamount to an assertion that in every case which was pending before and undetermined by the earlier commission at the time of its abolition and supercession, parties to the record could remain silent until the new commission had disposed of the case and then claim a right to a rehearing or to an argument or to a reargument because of such abolition and supercession. *Real Estate-Land Title & Trust Co. v. Philadelphia Electric Co. (Complaint Docket No. 10981).*

Duty to Extend Gas Service

A GAS company was ordered by the Pennsylvania commission to extend service to eleven residents of the city in which the company operated, after refusal of the company to extend except upon deposit to cover part of the cost. The commission found that the cost was not excessive and that the construction would undoubtedly result in others accepting service in the future.

The issue raised, it was said, was one of service and not of rates. The utility company, declared the commission, was required by law to supply its service to all consumers in the city who applied to it if the applicant could be served by a reasonable outlay of capital. The determining factor, the commission continued, is not one of profit alone, but the utility must serve all who can be reasonably reached, and what is or is not a reasonable extension cannot be governed by any general rule or regulation applicable to all cases that may arise. *Rilling et al. v. Pennsylvania Gas Co. (Complaint Docket No. 11565).*

Right to Inspect Reports Filed with Commission

THE Michigan commission denied an application by the manager of the transportation bureau of the Detroit Board of Commerce for inspection of motor carrier financial reports. Many carriers had filed reports under a rule of the commission adopted pursuant to statutory authority. The commission

said that it would be inclined to consider these reports a part of the commission's files pertaining to the application for and the certificate or permit of the reporting motor carrier, which files are made public under the terms of the act and available during office hours of the commission for inspection by any person. On the other hand, said the commission:

> .... these reports summarize much, if not all of the information which the commission under §11, Art. 5, of said Act 254 is authorized to secure by an examination of carriers' records, all of which information secured by the commission in this manner is made confidential, and the commission is prohibited from divulging or making the same known in any manner whatsoever not provided by law and except for the purpose of carrying out the provisions of the act.

Still, said the commission, the reports are not required pursuant to §11, Art. 5, but rather are required under other sections of the act, and publication of the reports might not be a violation of the law. The commission concluded that since the scope of the statute had not been judicially determined by the court of last resort of the state, the commission was not warranted in complying with the request. *Re Dean (D-3022).*

Protection of Electric Company against Physical Injury By City Plant

ALTHOUGH the United States Supreme Court has adopted the theory that an electric utility company is not protected from consequential damages resulting from economic causes due to competition from a rival business set up and operated by lawful authority, the rival has no right without awarding compensation to cause physical damages. Such is the statement of Justice Foster of the supreme court of Alabama in a case where a temporary injunction against a municipal plant was denied.

A substantial basis for the electric company's claim that operations of the municipality might cause physical damage was recognized by the court, but, in view of conflicting evidence submitted by affidavits as to the absence of serious danger, the court refused to decide the question and held that the controversy should be determined on a trial.

It was observed that the municipality in engaging in the electric business was not engaging in a governmental function but a business enterprise and as such must take its place with other industries, except that it was not subject to regulation by the state commission and had no need to secure a certificate of convenience and necessity. In all other respects, it was said, the city was liable to the same rules, including those of due care and skill, as applied to the electric company. Justice Foster said in part:

> Since appellant [the electric company] first constructed its system, and was the first to operate it so far as present purposes are concerned, when the city enters the same field it must observe the same safety measures as if it were another company with a second franchise, to the extent that they are necessary in the observance of due care. As such it cannot force appellant to alter its arrangements which would not otherwise be necessary, to make the continued operation of its system reasonably safe, without just compensation under §235, Constitution.

Alabama Power Co. v. City of Guntersville et al. 183 So. 396.

Right to Examine Commission Correspondence

AN application by a public utility company for leave to examine the correspondence files in certain proceedings before the Pennsylvania commission and certain other information alleged to be in the possession of the commission or its technical staff, with special reference to an order for a rate investigation, was denied. The commission was not persuaded that an examination of the correspond-

ence folders of the commission was necessary under the rules of law or the principles of fair play. The denial was, however, without prejudice to the presentation of a new application setting forth with particularity a description of the data sought if any rates prescribed by the commission should appear to be based upon data not of record.

The commission discussed the question whether papers, letters, and documents within the possession of the commission are public records, citing cases from other states on this point. It has been recognized by courts of some states that there are certain matters that come into the custody of public officers that are not matters of public record and therefore not accessible to the public. The commission recognized the rule that information in the possession of the commission but not put in evidence could not support an order, but there was said to be no question before the commission at the time warranting the application of this rule. *Pennsylvania Public Utility Commission v. West Penn Power Co. (Complaint Docket No. 11439).*

Other Important Rulings

THE Wisconsin commission, in establishing telephone rates, allowed one-quarter of one per cent for uncollectible operating revenues, a composite depreciation rate certified by the commission applied to the book value rather than depreciated value as determined, and a return of 6 per cent. *Re Community Telephone Co. (2-U-1180-1187).*

The Pennsylvania commission said that it was manifestly erroneous to charge depreciation at a given rate on the depreciated value of the property because with a static condition the undepreciated book value would never be realized from charges to consumers for service and the full undepreciated book value could never be charged off. *Pennsylvania Public Utility Commission v. Yardley Water & Power Co. (Complaint Docket No. 11545).*

The Colorado commission held that the fact that an applicant for a certificate of convenience and necessity had previously violated the For-Hire Carrier Act did not prevent the issuance of a permit to haul for hire where a suitable probationary period had elapsed and the applicant, by his conduct, had indicated that he had intended to comply with the For-Hire Carrier Act should a permit be granted and otherwise would make a dependable, satisfactory operator. *Re Richardson (Application No. 4370, Decision No. 12350).*

The Colorado commission held that the fact that a proposed transferee was operating illegally in the transportation of a commodity within a small specified area was not of sufficient gravity to deny the transfer of a certificate of convenience and necessity to him, where this was a common practice among common carriers who had assumed that no authority was required to haul in that area. *Re Van Hoesen (Application No. 2221-PP-AA, Decision No. 12344).*

The Securities and Exchange Commission, in authorizing the Dayton Power and Light Company to issue common stock to its parent corporation, Columbia Gas & Electric Corporation, and as part of the same transaction the Columbia Corporation to acquire such stock, declared that generally speaking the conversion of debt held by a parent company into the common stock of its subsidiary is desirable. The proceeds for the stock were to be used in part for the retirement of notes held by the parent company. *Re Dayton Power & Light Co. et al. (File Nos. 32-99, 46-106).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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VOLUME 25 P.U.R.(N.S.) NUMBER 5

Points of Special Interest

Titles and Index

TITLES

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Re Hackensack Water Company

Security issues, § 7 — Authorization — Effect of approving mortgage — Property values.

1. Approval of the execution of a first mortgage to secure the payment of bonds authorized by the Board is not to be construed as authorizing or permitting the issuance of any bonds in excess of the principal amount specified without further approval of the Board; nor is such approval to be deemed to constitute approval of any sale of property or of any property values, p. 354.

Security issues, § 115 — Financing expense — Limitation on commissions.

2. Commissions, in connection with the issuance of first mortgage bonds and the redemption of outstanding bonds, were limited to one-half of one per cent of the principal amount of bonds to be issued, p. 355.

Security issues, § 115 — Financing expenses — Attorneys' fees — Trustee's fees.

3. Counsel and attorneys' fees and expenses and trustee's fees and expenses should be limited to a reasonable amount upon the authorization of first mortgage bonds and the approval of the redemption of outstanding bonds, p. 355.

[October 13, 1938.]

APPLICATION *by water utility company for approval of the execution of a first mortgage and for approval of the issuance and sale of first mortgage bonds, and application for approval of the exercise of the right of redemption of outstanding bonds; authorization granted subject to conditions.*

By the BOARD: Application in writing dated August 3, 1938, being made to the Board of Public Utility Commissioners by the Hackensack Water Company for approval of the execution of a first mortgage dated October 1, 1937, to Hudson Trust Company, trustee, and for approval of the issue and sale by said company of $14,350,000 par value first mortgage bonds, series "A" 3½ per cent due October 1, 1968, secured by said first mortgage, said bonds to be otherwise as described in said indenture of mortgage aforesaid;

And further application in writing dated August 3, 1938, being made to the Board by said company for specific approval of the exercise by said company of the right of redemption at 107 per cent of par, of $5,262,000, par value of its presently outstanding general and refunding mortgage, 5½ per cent gold bonds, series "B," due June 15, 1977, said bonds having been issued under an indenture made by said company dated June 15, 1927, to the Hudson Trust Company, trustee, and under a supplemental indenture dated January 1, 1933, the exe-

cution of said indenture and supplemental indenture having been approved by said Board and the issue of said bonds having been approved by said Board by certificate dated January 4, 1933:

And the said Board having consolidated both applications for purpose of hearing and the issuance of certificate relating thereto, and being satisfied after investigation and due hearing that the proposed issuance of bonds is to be made in accordance with law and the purpose of said issue being approved by the Board, the said Board

Hereby grants said applications (subject to Conference Order No. 7 and)

[1] (1) Approves the execution of the first mortgage aforesaid to the Hudson Trust Company, trustee, dated October 1, 1938, according to the copy thereof filed with the Board at the hearing herein and which, by reference thereto, is made a part hereof; provided, however, that this approval shall not be construed in any manner whatsoever to authorize or permit to be issued under said mortgage, any bonds in excess of the principal amount of $14,350,000, without further approval of the Board first sought and obtained; and provided further, that nothing in this certificate contained shall be deemed to constitute an approval by said Board of any sale of property that may hereafter be made or of any values, valuation of property, or value of property additions, referred to in said mortgage, and

(2) Approves the issuance of said $14,350,000 first mortgage bonds, series "A," 3½ per cent due October 1, 1968, to be sold at not less than 105¼ per cent of the face amount thereof, plus accrued interest thereon, and

(3) Approves the redemption and retirement by said company of all of its presently outstanding bonds (including specifically but without limiting the generality of the foregoing, its general and refunding mortgage, 5½ per cent gold bonds, series "B," due June 15, 1977).

No additional bonds other than those expressly provided for in this certificate are to be issued for any purpose whatsoever under the indenture dated October 1, 1938, herein approved, without the further approval of the Board first had and obtained. Nor shall the right of redemption of series "A" bonds in accordance with § 1, Art. XIV, of the indenture dated October 1, 1938, be exercised unless the approval of the Board is first sought and obtained, excepting from this restriction redemptions pursuant to § 9 of Art. XV of said indenture, if the sale of the property has been approved by said Board prior to such redemption.

The company shall deliver to the Hudson Trust Company, trustee, under the mortgage herein approved, a certified copy of this certificate and said trust company shall file with the Board within ten days of the date hereof a statement in writing duly verified, acknowledging receipt of such certificate.

The company within fifteen days following the redemption date of each of the several series or issues of bonds described in said applications, proposed to be refunded or redeemed, shall file with the Board a duly veri-

fied statement that the total principal amount of each series or issue of bonds, as aforesaid, has been surrendered and canceled; or, if redemption is delayed by the holders of said bonds, that sufficient funds to effect full payment thereof, have been deposited with the proper trustee.

Any and all prior authorizations by this Board for the issuance of bonds by the company are hereby revoked and annulled to the effect that at the completion of the issuance and sale of bonds, as herein authorized, the company shall not have outstanding bonds of any description other than, or in excess of, the principal amount of $14,350,000 herein authorized.

[2, 3] Commissions in connection with the transactions covered by this certificate shall in no event exceed one-half of one per cent on $14,350,000, nor shall counsel and attorneys' fees and expenses paid on account of company and purchasers exceed $23,000, nor shall trustee's fees and expenses exceed $9,000.

NEW JERSEY SUPREME COURT

New Jersey Suburban Water Company

v.

Town of Harrison

[No. 20.]

(— N. J. L. —, 1 A. (2d) 61.)

Rates, § 237 — Schedules — What constitutes filing — Petition for change.

1. A petition filed with the Commission stating that a rate will be increased thirty days later and asking the Commission to fix and allow such increased rate serves as a filing of the increased rate schedule, p. 357.

Rates, § 24 — Powers of state — Contracts.

2. The state has sovereign power to fix just and reasonable utility rates regardless of a contract between the parties, and when the state, through its Board of Utility Commissioners, exercises its sovereign power over rates, the contract rights of the parties must yield, p. 358.

Rates, § 216 — Contract rate — Change — Filing schedule.

3. The filing of a rate schedule by a utility, when no order of suspension follows, is a lawful and effective means of changing the theretofore existing rate notwithstanding a contract between the utility and its customers establishing a lower rate, p. 358.

Appeal and review, § 25 — Decision by trial court — Question of fact.

4. The question whether a municipality and the Commission were misled by the apparent purpose of a utility, filing notice of a rate increase and a

request for Commission approval, not to put any new rate into operation before Commission decision, is a question of fact which when decided by the trial court furnishes no ground for appeal, p. 359.

[August 11, 1938.]

APPEAL *from judgment for water utility in suit to recover for water supplied to a municipality; affirmed.*

APPEARANCES: Michael J. Bruder, and Anthony P. Kearns, both of Newark for appellant; George W. C. McCarter, of Newark, for respondent.

CASE, J.: Plaintiff, a water utility, contracted in 1903 with defendant, one of the municipal corporations of the state, to deliver to defendant, over a term of years and at a named rate, the town water supply, distribution to consumers to be made by the defendant. In 1924 the parties entered into an extension and supplemental agreement, in force during the period sued upon, renewing and continuing the terms of the earlier agreement "with the exception that the price to be paid by the town for all water supplied by the company to the town during the said additional period of fifteen years herein agreed upon, shall be at the rate of $104.25 per million gallons instead of $82.50 per million gallons (the amount fixed under the agreement of September 15, 1903), but subject, however, to the right and privilege for either the company or the town at any time during the said additional term of fifteen years to apply unto the Board of Public Utility Commissioners of the state of New Jersey or any other state board having jurisdiction over the same, to change the said rate for water which is being fixed under this agreement by the parties hereto." After the making of the extension agreement, but before the event next mentioned, the town made application for and received from the Board of Public Utility Commissioners an order reducing the water rate from $104.25 to $99 per million gallons. On April 30, 1936, the company filed with the Public Utility Commissioners a lengthy petition, simultaneously serving a copy upon the municipality, which contained as Par. 2 this: "The schedule of rates presently effective is $99 per million gallons. Your petitioner as of June 1, 1936, will increase its rate to the sum of $151.91 per million gallons"; and as its closing paragraph this: "Your petitioner hereby files its schedule effective June 1, 1936, of a rate of $151.91 per million gallons, and prays that the same will be fixed and allowed by your Honorable Board."

This and the other data contained within the petition was in compliance with the board "Conference Ruling Number Fifteen Applying to Changes in Rates by Public Utilities," one of the regulations set up by the ruling being that written notice containing the information therein required should be mailed to the office of the Board at least thirty days prior to the date when the proposed change of rate was to be made effective. Section 17(h) of the Act Concerning Public Utilities, Chap. 195, P. L. 1911, as amended by Chap. 150, P. L. 1926,

Rev. Stats. 1937, 48:2–21, subd. d, provides that:

"When any public utility as herein defined shall increase any existing individual rates, joint rates, tolls, charges, or schedules thereof, . . . the Board, shall have power either upon written complaint or upon its own initiative to hear and determine whether the said increase, change, or alteration is just and reasonable. . . . The Board shall have power pending such hearing and determination to order the suspension of the said increase, change, or alteration until the said Board shall have approved said increase, change, or alteration, not exceeding three months. If such hearing shall not have been concluded within such three months, the Board shall have power during such hearing and determination to order a further suspension of said increase, change, or alteration for a further period not exceeding three months. It shall be the duty of the said Board to approve any such increase, change, or alteration upon being satisfied that the same is just and reasonable."

Up to May 3, 1937, when the summons in the present suit issued, there had been no order by the Board either granting, denying, or suspending the proposed increase. The first count of the complaint seeks to recover at the increased rate for water supplied from January 1, 1937 to March 31, 1937. There was a second count upon quantum valebat which appears to have been abandoned.

Judge Porter, sitting without a jury, found as a fact that there were no acts of waiver or estoppel by the plaintiff and that the document filed April 30, 1936, was filed as a schedule of increased rates and as a matter of law that the schedule became effective for the reason that there was no action of suspension taken by the Board. Defendant had paid for the quantity sued upon up to the sum called for by the former rate. Judgment went against defendant for the balance, namely, $14,020.83 and costs. Defendant appeals.

The points presented by appellant go to the court's denial of the defendant's motion "for a directed verdict" and to several evidence rulings. We find no error in the latter.

Defendant's motion for a "directed verdict" was, we assume, disposed of by the trial court as a motion for a ruling that upon all of the evidence the plaintiff, as a matter of law, was not entitled to recover.

There are two questions that deserve consideration: The one a mixed question of law and fact, namely, whether the plaintiff did that which under the statute and the Board's Conference Ruling Number Fifteen was a filing of an increased rate, and the other a question of law, namely whether plaintiff, in view of its contract, was authorized by the statute or permitted by the Constitution to increase its rate against the defendant in that manner.

[1] The statute does not direct the procedure. Specifically, it gives (§ 11, Rev. Stats. 1937, 48:2–12) to the Board the power to make all needful rules for its government and other proceedings not inconsistent with the statute. Conference Ruling Number Fifteen is obviously intended to control the filing by utilities of changes in their rates; it is so entitled—"In the Matter of Filing Changes in Rates by

Public Utilities." We find no essential requirement therein that is not met by the document filed on April 30, 1936. That paper contains, twice, the statement that on June 1, 1936, the utility would increase its rate to the named figure. We conclude that the filing of the petition served as a filing of the increase rate schedule.

[2, 3] It is established that the state has sovereign power to fix just and reasonable utility rates regardless of a contract between the parties and that when the state, through its Board of Utility Commissioners, exercises its sovereign power over rates, the contract rights of the parties must yield. Hackensack Water Co. v. Public Utility Comrs. (1921) 96 N. J. L. 184, P.U.R.1922C, 60, 115 Atl. 528. What has not been decided in this state is whether an increase of rate filed by a utility without suspension or other adverse order by the Board takes comparable place with a Board order as an exercise of the sovereign power; and this becomes a matter of statutory construction, for we observe no reason why the legislature may not adopt as its own the posture of the Board in permitting a rate to become effective when it has the facts before it or within its reach and may, by a written word, undo the efficacy of the filed schedule.

The question is not without its difficulties. The attorney of the Board made the statement to the trial court that there were two methods by which rates might be increased: "first, by filing a revised schedule of increased rates. That is one form. If the Board does not suspend those rates, then, ultimately, within the time indicated, those rates become what is known as effective rates. The second method is by filing a petition asking the Board to investigate and to fix an increased rate." Clearly the Board has recognized the filing of a rate schedule by a utility, when no order of suspension follows, as a lawful and effective means of changing the theretofore existing rate. The Utilities Act, Rev. Stats. 1937, 48:2–1 et seq., has been on the books for twenty-seven years. How many instances there may be of the changing of contract rates by the filing of new and unsuspended schedules and what unsettlement of incidents heretofore thought to be closed would be effected by avoiding of the existing practice, we do not know, but we consider that under the circumstances no overturn of the accepted construction of the law should be made upon a nice balancing of the argument.

Our statute gives little help. The only language in our decisions that seems to have a direct bearing is that of our late Chief Justice Gummere in the Hackensack Water Company Case, *supra,* at p. 66 of P.U.R.1922C, wherein it was said that: "It may be conceded that neither the city of Hoboken nor the water company can alter this contract without the consent of the other party to it . . . ." That statement was not essential to the decision of the case and seems to us to have been intended as a concession made for the purposes of the argument and not as a pronouncement of the law. The United States Supreme Court recently decided the case of Midland Realty Co. v. Kansas City Power & Light Co. (1937) 300 U. S. 109, 81 L. ed. 540, 17 P.U.R.(N.S.)

113, 116, 57 S. Ct. 345, 347, wherein two sets of rates, one a schedule filed by the utility and the other fixed by the Public Service Commission, were made to apply in consecutive periods, both rates being increases over those fixed by contract, and the opinion holds that:

"It is clear that, as against those specified in the contract here involved, the rates first filed by plaintiff and those promulgated by the Commission in accordance with the statute have the same force and effect as if directly prescribed by the legislature."

[4] The position strongly taken in the instant case is that both the municipality and the Board were misled by the apparent purpose of the utility not to put any new rate into operation until the Board should render its decision, an act which appears from the record to have been done at the time of the trial by retaining the old rate. But that goes into the questions of estoppel and of waiver which were matters of fact decided by the trial court adversely to the appellant's contention and therefore not grounds for appeal.

We conclude that the judgment below should be affirmed.

SECURITIES AND EXCHANGE COMMISSION

Re John A. Dawson et al. Acting As Committee for Holders of Bonds of Utilities Elkhorn Coal Company

[File No. 34-13.]

Corporations, § 24 — Reorganization proceedings — Protective committee — Powers.

1. A protective committee representing bondholders in a reorganization proceeding may in no event be given blanket authority to assent to or dissent from any plan of reorganization which may be drafted, since this is a matter which must in fairness be passed upon by each bondholder in connection with a particular plan, p. 362.

Corporations, § 24 — Reorganization proceedings — Protective committee — Deposit agreement.

2. A protective committee representing bondholders in a reorganization proceeding undertakes to act in a fiduciary capacity; its powers under the deposit agreement should be limited to those strictly necessary for the purpose at hand, and it should be subject to the liabilities and responsibilities of a fiduciary, p. 362.

Corporations, § 24 — Reorganization proceedings — Protective committee — Deposit agreement.

3. Permission should not be granted to a protective committee to solicit the deposit of bonds by bondholders and to solicit authority to act as a

protective committee in connection with a reorganization, when under the proposed deposit agreement the bondholder is given virtually no control over either his deposited bond or the settlement which he will receive from the reorganized company, but his fate lies completely in the control of the protective committee—a committee completely exonerated from liability for negligence, p. 362.

Corporations, § 24 — Reorganization proceeding — Protective committee — Enforcement of contract.

4. Bondholders should not be subjected to the expense and hazard of depositing their bonds with a protective committee in order to enforce a contract in reorganization proceedings, when it is apparent that the enforceability of the contract can be litigated by the trustee under the deed of trust securing their bonds or by individual bondholders, at least until the necessity for such action by a protective committee is disclosed, p. 364.

[August 5, 1938.]

DECLARATION *for permission to solicit the deposit of bonds and to solicit authority to act as a protective committee in connection with a reorganization; ordered that declaration shall not become effective.*

By the COMMISSION: A declaration was filed with the Commission by Avery Brundage, John A. Dawson, Clayton J. Howel, and George F. Manzelman, under Rule 12E–3(e), issued pursuant to §§ 12(e) and 11(g) of the Public Utility Holding Company Act of 1935, for permission to solicit the deposit of Utilities Elkhorn Coal Company 6 per cent 20-year first mortgage sinking-fund gold bonds, and to solicit authority to act as a protective committee in connection with the reorganization of Utilities Elkhorn Coal Company.

At the hearing on this declaration, which was held after appropriate notice, a statement was filed by counsel for the declarants withdrawing the name of Avery Brundage from the personnel of the committee. The Commission has examined the record in this matter and makes the following findings:

Utilities Power & Light Corporation owns all of the outstanding common stock of Utilities Elkhorn Coal Company. Both the parent and subsidiary are at the present time undergoing reorganization under § 77B of the Bankruptcy Act. The 6 per cent bonds, the deposit of which the declarants propose to solicit, are the only securities which Utilities Elkhorn has outstanding in the hands of the public.

On January 1, 1938, Utilities Elkhorn defaulted on such 6 per cent bonds through nonpayment of the interest due on that date and by not making the necessary payment in accordance with the sinking-fund provisions contained in the deed and trust securing the issue. Subsequently the company filed a voluntary petition to reorganize under § 77B of the Bankruptcy Act.

In 1928, at the time the 6 per cent bonds were issued, Utilities Power &

Light Corporation, Utilities Elkhorn Coal Company, and the Continental Illinois National Bank and Trust Company of Chicago (trustee under the deed of trust for Utilities Elkhorn 6 per cent bonds) entered into an agreement whereby Utilities Power & Light Corporation agreed to purchase coal from Utilities Elkhorn Coal Company in stated amounts at a stated price. The contract further stated that Utilities Power & Light Corporation agreed with Utilities Elkhorn Coal Company and with the trustee, for the benefit of the bondholders, that the corporation pay to Utilities Elkhorn an amount which would be sufficient to permit the coal company to make the payments required under the deed of trust for the 6 per cent bonds as to both interest and the sinking-fund requirements, even though no coal should be mined, sold, delivered, or accepted in accordance with the contract.[1] On January 28, 1938, the trustee in bankruptcy for Utilities Power & Light Corporation petitioned the court in the reorganization proceedings for an order authorizing him to disaffirm this contract,[2] and such an order was entered on February 1, 1938. Subsequently, on February 16, 1938, a petition was filed by Continental Illinois National Bank and Trust Company of Chicago (as trustee under the deed of trust securing the Utilities Elkhorn 6 per cent bonds) in which the bank as trustee asked the court to vacate the order disaffirming the contract, and on March 3, 1938, the trustee filed notice with the trustee in bankruptcy demanding that payments be resumed in accordance with the contract. No action has yet been taken by the court with regard to either the petition or the notice. It has been stated in an opinion filed with this Commission by the counsel for the declarants that the trustee under the deed of trust is without power or authority to file such a petition or to otherwise enforce the contract.

The assets of Utilities Elkhorn Coal Company consist primarily of certain coal lands situated in Kentucky and of this contract with Utilities Power & Light Corporation. Thus, the question of whether or not the 6 per cent bonds of Utilities Elkhorn Coal Company have been guar-

[1] "The second party agrees with the first party, and with the third party, as trustee, for the benefit of the present and future holders and owners of $1,700,000 principal amount of 6 per cent 20-year first mortgage sinking-fund gold bonds of the first party to be presently issued, that in the event of the happening of any of the events specified in Pars. 6 and 7 hereof, or if any other event transpires preventing or delaying the production or delivery f.o.b. mines of any of the coal deliverable hereunder, or in the event said first party shall for any reason whatsoever fail or refuse so to produce and/or deliver said coal in accordance with this agreement, it, the second party, will nevertheless pay to the first party, as an advance payment on the purchase price of the coal then or thereafter deliverable hereunder, an amount sufficient to enable the first party to make the payments required to be made for interest and sinking fund under the provisions of the indenture securing the said 6 per cent 20-year first mortgage sinking-fund gold bonds of the first party. The first party, on its part, agrees with the second party, and with the third party, as trustee, for the benefit of such present and future holders of such bonds of the first party, that all moneys so received by it, in the event of the happening of any of such contingencies, from the second party will be applied to the payment of such interest and sinking-fund obligations." Par. 11, of contract dated July 1, 1928, filed by declarants as Exhibit "A" to declaration.

[2] Section 77B(b) of the Bankruptcy Act, as amended, provides in part that the court ". . . may reject contracts of the debtor which are executory in whole or in part, including unexpired leases except contracts in the public authority."

anteed by Utilities Power & Light Corporation is one of extreme importance to the bondholders of the now bankrupt subsidiary. While the Commission expresses no opinion as to the merits of the controversy it does recognize the desirability of adequate representation for the 6 per cent bondholders so that all questions arising thereunder may be fully investigated and all rights adequately protected.

Following the withdrawal of Avery Brundage, John A. Dawson became chairman of this protective committee. Mr. Dawson owns none of the bonds nor has he any other financial interest in the company or any connection with any of the interests involved in the reorganization of either Utilities Power & Light Corporation or Utilities Elkhorn Coal Company. He testified that he was acting as a member of this committee solely to protect the interests of those bondholders to whom he had sold bonds at retail. Mr. Dawson retailed approximately $30,000 face amount of the bonds, at prices ranging from 36 to 77. He did not sell any of these bonds when they were originally offered to the public in 1928. Mr. Dawson stated that he chose all the other members of the protective committee, Clayton J. Howel, George F. Manzelman, and Avery Brundage because they were Chicago business men whom he knew, at least slightly, and in whom he had confidence. He had had some business dealings with Clayton J. Howel and George F. Manzelman. Avery Brundage was recommended to him by a mutual friend. Mr. Howel is a member of the investment committee of the International Council of Religious Education and is also a member of the finance committee of the Chicago Baptist Association. Mr. Howel owns individually $3,000 face amount of the 6 per cent bonds of Utilities Elkhorn which were purchased within the past two years at a price between 40 and 45. The International Council owns $4,000, face amount, of Elkhorn bonds and the Chicago Baptist Association owns $5,000, face amount. George F. Manzelman, the other member of the protective committee, is vice president of the North American Accident Insurance Company, Chicago, Illinois, and chairman of the investment committee of the Chicago Baptist Association. Mr. Manzelman does not own any of the bonds and the insurance company owns none.

1. Powers Sought by the Committee

[1–3] The protective committee has filed with this Commission a deposit agreement pursuant to which it proposes to seek a deposit of bonds. Recognizing that many of the provisions of this deposit agreement (which is conventional in form) violate express provisions of our 12E rules, Mr. Dawson and counsel for the committee have stipulated that they are willing to make any changes in this deposit agreement which the Commission deems necessary or proper. Nevertheless, examination of the deposit agreement indicates the scope of the authority which this protective committee wished to acquire over the securities to be deposited.

By the terms of the agreement, the committee is given authority to do almost any act which it desires without consulting the wishes of the bondholders. The committee may assent

to or dissent from any plan of reorganization for Utilities Elkhorn, although to date no plan has been formulated. The committee may amend any reorganization plan after its adoption, in such manner as it deems desirable. It need not report to depositing bondholders nor need it furnish them an accounting statement until the end of its activities. Bondholders may withdraw their bonds from deposit only in certain limited circumstances, and withdrawal is conditioned upon payment by the depositor of his pro-rata share of the expenses of the committee[3] as determined by the committee.[4] This last provision violates Rule 12E–3 (a) of this Commission.

The deposit agreement permits the members of the committee to buy and sell certificates of deposit and securities of the company or to participate in any underwritings in connection with a reorganization plan.[5] The provision permitting members of the committee to trade in certificates of deposit or any other deposited securities is in contravention of Rule 12E–3 (a) of this Commission. At the same time, the depository designated in the deposit agreement as well as the committee and its members are completely exonerated from any and all liability except for their gross negligence or wilful default.[6] The possibilities of overreaching which arise from such provisions have been set forth at length in reports of this Commission to Congress.[7]

In brief, this protective committee sought to exercise powers over deposited securities which have no possible justification in the circumstances of this particular case. In no event may a protective committee be given

[3] Article VI, § 3(b) of the deposit agreement provides that any depositor may withdraw if such deposit shall ". . . pay or assume in a manner satisfactory to the committee his pro-rata share as determined by the committee of the expenses of the committee, including taxes, liabilities, and losses, assumed incurred by the committee (other than expenses, liabilities, and losses, as may theretofore have been allowed by court payable by, or out of the assets of, the company or any organization successor company), but not to exceed 75 cents for each bond withdrawn."

[4] Article V, § 3, of the deposit agreement permits withdrawal when the depositor desires to express his dissent to a plan of reorganization. Unless such withdrawal is made within thirty days the depositor shall be conclusively assumed to have consented to the plan.

Article V, § 4, of the agreement gives to the depositor the right to withdraw if the plan of reorganization is materially modified after it has been approved. Again such withdrawal must be made within thirty days after the date of such modification.

Article VI, § 5, of the agreement apparently permits a depositor to withdraw any time previous to such time when he may be deemed to have assented to a plan of reorganization, but this right is limited since it is given subject to the discretion of the committee.

[5] Article III, § 6, of the deposit agreement provides in part as follows: "Any member of the committee may buy, sell, or otherwise deal in certificates of deposit or under any other deposit agreement and in the said bonds, stock, or other securities of a company or of any subsidiary or affiliate company or of any corporation which may or might acquire all or any part of the property and assets of the company . . . and any member of the committee may act as an officer or director of the company or of any such other corporations and any member of the committee may act as a voting trustee or stockholder of the company or for the stock of any such other corporation as freely as if he were not a member of the committee . . . may participate . . . in any syndicate or underwriting in connection with any measure taken in furtherance of this agreement or of any plan of readjustment or reorganization adopted hereunder and they, he, or it, may be financially interested in loans made in the company or to any subsidiary affiliate or other corporation."

[6] See Deposit Agreement, Art. I, § 3; Art. III, §§ 4 and 5.

[7] See Report on Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees, Parts I, II, and VI.

blanket authority to assent to or dissent from any plan of reorganization which may be drafted. This is a matter which must in fairness be passed upon by each bondholder in connection with a particular plan. Section 11 (g) of the Public Utility Holding Company Act of 1935 provides that before consents to or dissents from any proposed plan of reorganization can be solicited, each bondholder must be furnished with a copy of a report by the Commission on such plan of reorganization. The purpose of requiring such a report obviously was to acquaint each bondholder with the facts involved in a particular plan in order that he might exercise his right to assent to or dissent from the plan intelligently. To permit a protective committee to acquire by virtue of the deposit agreement the right to assent to or dissent from a plan of reorganization which is not now in being is to give that protective committee a "blank check" to bind the bondholders in any way it sees fit. The inclusion of such a provision in the deposit agreement would be, of course, repugnant to the express provisions of § 11 (g).

By the provisions of the deposit agreement discussed above (and because of others which we do not deem it necessary to mention), the committee sought unfair and inequitable powers over the deposited securities without assuming concomitant responsibilities. Such provisions have no place in a deposit agreement. The committee is undertaking to act in a fiduciary capacity. Its powers should be limited to those strictly necessary for the purpose at hand, and it should be subject to the liabilities and responsibilities of a fiduciary. A position of a member of a protective committee is one of trust and responsibility rather than of profit; a committee member, as a fiduciary, must guard the interests of the depositing security holders before he seeks a profit. Moreover, a deposit agreement should not bind the depositor to an unknown course of action. The depositor should be given a voice in deciding what is to be done with his property.

Under the proposed deposit agreement, however, the bondholder had virtually no control over either his deposited bond or the settlement which he will receive from the reorganized company. His fate lies completely within the control of the protective committee—a committee which is completely exonerated from liability for negligence.[8]

The Commission, therefore, finds that the declarants have failed to establish that a deposit of securities is necessary for purposes as broad as those indicated by the committee's deposit agreement. Even if the provisions in the deposit agreement which are in direct violation of the Commission's rules were eliminated, we could not approve solicitation of deposits in this case for the broad purposes embraced by this proposed deposit agreement.

2. Enforcement of the Contract with Utilities Power & Light Corporation

[4] The committee has attempted

[8] Mr. John A. Dawson, chairman of the committee, testified as follows (In the Matter of John A. Dawson, et al., Protective Committee, p. 75):

Q. You do not feel, however, that you should be liable for your negligent conduct?
A. No.

to establish that it should be permitted to solicit deposit of Utilities Elkhorn 6 per cent bonds under Rule 12E–3 (e) in order to maintain the rights of such bondholders under the contract with Utilities Power & Light Corporation.

In a brief filed with the Commission by counsel for the declarants it was stated that, in the opinion of such counsel, it was impossible for the trustee under the deed of trust securing the Utilities Elkhorn 6 per cent bonds to maintain an action to adjudicate rights under the contract. The attorney for the debtor in possession (Utilities Elkhorn Coal Company) stated, however, in an opinion filed with the Commission that in his opinion the trustee under the deed of trust has the sole right to maintain an action for the benefit of the bondholders, and that the bondholders could not do so themselves unless the trustee refused to act.

While the Commission expresses no opinion as to the right of the trustee under the deed of trust to maintain such an action for the benefit of the holders of the Utilities Elkhorn 6 per cent bonds, it should be noted that the deed of trust contains provisions which apparently gives it authority to act on behalf of the bondholders,[9] and further that the trustee under the deed of trust (Continental Illinois National Bank and Trust Company) was a party to the alleged contract of guaranty, and hence may have the right to enforce it.[10] Moreover, the deed of trust apparently placed the entire right of action in the trustee; it is provided that only if the trustee refuses to act may the bondholders bring suit.[11] It has been held under somewhat similar circumstances that the sole right of action is vested in the trustee for the benefit of the bondholders.[12]

Obviously, the trustee under the deed of trust has the primary duty to enforce the rights of the bondholders if it is legally possible for it to do so. And if adjudication of the issues by the trustee is binding upon all bondholders, there is no reason to subject bondholders to the expense and hazards of depositing their bonds with a protective committee. At the present time the trustee under the deed of trust is attempting to have the order of the bankruptcy court disaffirming the contract set aside, and to enforce the bondholders' alleged rights.

Another possibility is that the bankruptcy court which has jurisdiction over the reorganization of both Utilities Power & Light Corporation and Utilities Elkhorn Coal Company might permit one or more bondholders to litigate this matter as representative of the entire class.[13] Apparently such an

[9] Deed of Trust, Art. IV, § 10 (page 89); Art. IV, § 13 (page 91); Art. VI, § 11 (page 106).

[10] This provision in the alleged contract of guaranty reads as follows: "The second party [Utilities Power & Light Corporation] agrees with the first party [Utilities Elkhorn Coal Company] and with the third party, as trustee, for the benefit of the present and future holders and owners of $1,700,000, par amount of the 6 per cent 20-year sinking-fund gold bonds, of the first party to be presently issued, . . ." See also the portion of contract set forth in footnote 1, *supra*.

[11] Deed of Trust, Art. VI, § 11 (page 106).

[12] Central Hanover Bank & Trust Co. v. Siemens & Halske Aktiengesellschaft (1936) 15 F. Supp. 927, affirmed (1936) 84 F. (2d) 993.

[13] "Representatives of Class—When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one may sue or defend for the whole." Federal Equity Rule, No. 38.

action could be maintained only if the trustee under the deed of trust refused to take the necessary steps to protect the interests of the bondholders.[14] It may be that an adjudication obtained in such suit would bind other members of the class who have notice of the suit and who are given an opportunity to be heard.[15]

In any event, it is extremely doubtful whether this protective committee could get all the outstanding 6 per cent bonds deposited. Hence, adjudication obtained by this committee would probably have little advantage over an adjudication obtained by a holder of a few bonds, as representative of the entire class, in respect of the finality of such determination upon all bondholders.

In view of the foregoing, and specifically because the committee has failed to establish that solicitation of deposits is necessary under Rule 12E–3(e), this declaration will not be permitted to become effective. In the event that it is established that the trustee does not have adequate power to take necessary steps for enforcement of the bondholders' alleged rights under the contract, or that the trustee is not taking vigorous steps for this purpose, or that such rights of the bondholders cannot or are not being adequately protected by means of action by one or more bondholders on behalf of the class, the committee may renew its application to this Commission. Any renewed application to solicit deposits should, of course, be restricted to the limited purpose of protecting the alleged rights under the contract.

An appropriate order will issue.

ORDER

A declaration having been filed with the Commission by John A. Dawson, Clayton J. Howel, and George F. Manzelman, under Rule 12E–3(e), issued pursuant to §§ 12(e) and 11 (g) of the Public Utility Holding Company Act of 1935, for permission to solicit the deposit of Utilities Elkhorn Coal Company 6 per cent 20-year first mortgage sinking-fund gold bonds, and to solicit authority to act as a protective committee in connection with the reorganization of Utilities Elkhorn Coal Company;

A public hearing having been held on this declaration after appropriate public notice; the Commission having considered the record in this matter and having made and filed its opinion and findings herein;

It is *ordered* that this declaration shall not become effective.

[14] Deed of Trust, Art. VI, § 11 (page 106).

[15] See Smith v. Swormstedt (1853) 16 How. 288, 14 L. ed. 942; Ben Hur v. Cauble (1921) 255 U. S. 356, 65 L. ed. 673, 41 S. Ct. 338; Re Dayton Coal & Iron Co. (1922) 291 Fed. 390; Carnahan v. Peabody (1929) 31 F. (2d) 311; Reconstruction Finance Corp. v. Central Republic Trust Co. (1935) 11 F. Supp. 976; Irwin v. Missouri Valley Bridge & Iron Co. (1927) 19 F. (2d) 300.

In Smith v. Swormstedt, *supra*, at p. 303 of 16 How. the court said:

"Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained."

Portland Water District

v.

Itself

[F. C. 1103.]

Discrimination, § 50 — Contract for free service — Person entitled to benefit — Right-of-way grant.

1. A water customer should be billed the regular rates on file with the Commission instead of receiving free service provided for in an agreement granting a right of way to the water utility where there is nothing to show that he is entitled to claim any benefits under the contract although his wife, as an heir of the original beneficiary, might have certain rights, p. 371.

Discrimination, § 51 — Contract for free service — Illegality — Right-of-way grant.

2. An agreement between a water utility and a landowner providing for a right-of-way grant to the utility and for free water service to the landowner offends against the law making discrimination illegal, and those acquiring rights through the landowner should be charged the regular schedule of rates on file with the Commission, p. 372.

Discrimination, § 50 — Contract for free service — Person entitled to benefit — Lack of assignment.

3. A water customer has no right to free service under an agreement between a utility and a landowner providing for the grant of a right of way to the utility and for free service to the landowner when there has been no assignment of the rights to the customer, who is the present owner of the premises; and he should pay the established rates on file with the Commission, p. 373.

Discrimination, § 50 — Contract rates — Unapproved contract — Illegality.

4. An agreement between a water customer and a water utility for rates other than the regular rates on file with the Commission is void without the approval of the Commission, and the customer must pay the rates on file with the Commission, p. 374.

Discrimination, § 50 — Contract for free service — Person entitled to benefits — Personal rights acquired.

5. An agreement between a water utility and a landowner providing for a grant of right of way to the utility and for free service to the landowner, without any grant of rights to the heirs and assigns of the landowner, is a purely personal contract which terminates upon the decease of the landowner, and a subsequent owner of the property to whom an attempted assignment of the rights has been made must pay the established rates on file with the Commission, p. 376.

MAINE PUBLIC UTILITIES COMMISSION

Complaint by water district alleging that certain parties are receiving water without charge or at less than established rates in violation of law; complaint sustained and contracts declared to be invalid and terminated, except as to parties failing to appear and against whom evidence is lacking.

Appearances: G. H. Hinckley Portland, for the following property owners: E. F. Gale, Clifton D. Rogers, Fred Brown (Effie P. Brown), James H. Green, Mrs. William Bolton, Frank E. Carty (Walter L. Libby), Wesley Goodiell, Fred E. Stevens (Horace H. Stevens), Morse Willis, Neil S. Hayden, Stanley French, Henry M. Toft, Arthur E. Gray, A. Erlon Mosher, all of Gorham, Maine; and Edna Whalen, Lexington, Massachusetts; G. M. Simmons, Bayside, Long Island, New York. David E. Moulton, Portland, for Portland Water District. Raymond S. Oakes, Portland, for C. Ward Estate (Herbert F. Ward) Gorham.

The following persons were officially notified but were not present in person or represented by attorney: Annie Kelley, North Windham, and Alphonse Hamel, Gorham.

By the Commission: Portland Water District was organized under the provisions of Chap. 433 of the Private and Special Laws of 1907, and by its charter was authorized to acquire the entire plants, properties, franchises, rights, and privileges of the Portland Water Company and the Standish Water & Construction Company, and, pursuant to its Articles of Incorporation, took over those several properties.

Section 13 of the act provided: "All valid contracts now existing between said water companies, or either of them, and any person, corporation, or municipal corporation for supplying water within the cities of Portland, South Portland, and Westbrook and the towns of Standish, Gorham, Windham, Falmouth, Cumberland, and Cape Elizabeth, shall be assumed and carried out by said Portland Water District. . . ."

It appears that in the town of Gorham there are nineteen individuals who are receiving water from a varying number of fixtures by reason of certain contracts, licenses, permits, or grants. These contracts, et cetera, are predicated in general upon the giving to the Portland Water Company of a right of way to lay pipes across these certain individuals' lands, the pipes in general being the supply line from Sebago lake, by means of which water is furnished to the rest of the Portland Water District System. None of these nineteen individuals has ever paid, or is now paying, the filed rates of the Portland Water District as established for the town of Gorham.

The Portland Water District filed a complaint against itself, pursuant to the provisions of Chap. 62 of the Revised Statutes, setting forth:

"That under and pursuant to said contracts, the Portland Water Company did supply water, without charge in many instances, and in other instances at less than its established rates, to various parties situated in said town of Gorham, and that said

Portland Water District, upon taking possession of the rights and properties of said Portland Water Company, continued to supply water to said parties in many cases without any charge whatever and in other cases, at less than the established rates.

"That said water has been furnished free or at less than established rates to said parties hereinafter designated for many years.

"The Portland Water District, therefore, alleges and complains against itself and against the parties hereinafter designated and now receiving water under said contracts, either without charge or at less than the established rates, and says that such service amounts to an undue and unreasonable preference or advantage to said parties and that such service should be prohibited and declared unlawful."

Hearing was ordered to be held at Gorham, April 4, 1938, and notice was given to all parties concerned, as evidenced at the hearing, with appearances as above. The matter has been kept open for the purpose of allowing certain persons to produce documentary evidence of the basis of their claimed rights to receive water from the Portland Water District at other than the filed rates.

Section 38 of Chap. 62, Rev. Stats. reads:

"It shall be unlawful for any person . . . knowingly to . . . accept, or receive any rebate, discount, or discrimination in respect to any service rendered, or to be rendered by any public utility, or for any service in connection therewith whereby any such service shall in any manner, or by any device whatsoever, be rendered free or at a rate less than named in the schedules in force as provided herein or whereby any service or advantage is received other than is herein specified; . . . nor shall the furnishing by any public utility of any product or service at the rates and upon terms and conditions provided for in any contract in existence January 1, 1913, be construed as constituting a discrimination or undue or unreasonable preference, or advantage within the meaning specified; provided, however, that when any such contract or contracts are or become terminable by notice of such utility the Commission shall have power in its discretion to direct by order that such contract or contracts shall be terminated by such utility as and when directed by such order; . . ."

Re Searsport Water Co. (1919) 118 Me. 382, 392, P.U.R.1920C, 347, 358, 108 Atl. 452, says:

"By the act the Utilities Commission is expressly authorized to inquire into the management of the business of 'all' public utilities which are by its express terms made subject to the jurisdiction, control, and regulation of the Commission. 'Every' unjust and unreasonable charge for such service is prohibited. Whenever, upon hearing, 'any' rate, toll, charge or schedule or joint rates are found to be unjust, unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of the act, the Commission is given full power to substitute therefor such rates, toll, charges, or schedules as may be just and reasonable.

"Such language is clearly broad enough to include the regulation and control of every rate, toll, charge, or schedule of every public utility wheth-

er fixed by contract or by the utility itself, unless limited in some manner by the terms of the act, or the state has previously suspended its regulatory powers in respect to the rates or charges in question.

"But it is suggested that to so construe it would give the act a retroactive effect, and as such an intent is not clearly expressed, it must be construed prospectively, and all existing contracts therefore be excluded from its operation. We do not think, however, that either the act itself, or § 16 of Chap. 55 (§ 16 of Chap. 62, 1931) prohibiting unjust and unreasonable rates, affects the validity of any existing contract. All such contracts remain valid, binding obligations unaffected in their terms, until the Utilities Commission has found that the rates contained therein are 'unjust, unreasonable, or insufficient,' when just and reasonable rates may then be substituted therefor. . . .

"As said by the court in Manitowoc v. Manitowoc N. Traction Co. (1911) 145 Wis. 13, 30, 129 N. W. 925, 140 Am. St. Rep. 1056:

" 'Until that determination is made, the contract is in force. When it is made, the contract is superseded, if the rate is changed.'

"Such contracts having been voluntarily entered into and their terms and rates agreed upon by all parties, in distinction from rates arbitrarily imposed by the utility, the rates fixed therein are presumed to be reasonable and just until otherwise determined by the Utilities Commission after hearing, either upon complaint of the consumer under § 43, or of the utility under § 50, or upon its own motion under § 48 of Chap. 55. It is the rates at the time of the hearing that are adjudicated by the Commission. If then found to be unjust and unreasonable, they are from that time unlawful.

"A utility cannot repudiate such a contract at will. Nor does the filing of new schedules under § 28 have the effect of changing the rates fixed by contract. To obtain a change in such rates, except, of course, by mutual consent, and with the approval of the Utilities Commission, the utility should proceed under § 50 of Chap. 55, and first obtain, a finding by the Utilities Commission that the rates and charges fixed in such contract are 'unjust, unreasonable, or insufficient,' whereupon the Commission may then substitute such rates as it shall deem to be just and reasonable in the premises.

"Vested rights under existing contracts are, therefore, in no way affected by the terms of the act itself, nor, as we view it, by its operation. All contracts relating to the public service are entered into in contemplation of the exercise of the right of the state's regulatory powers whenever the public interests may require. No vested rights can be gained by contract or otherwise as against the proper exercise of the police powers of the state. Nor does legislation vesting the police power in a subordinate body or Commission create any new obligations or duties, or impose any new disabilities with reference to past transactions."

To avoid needless repetition with regard to finding certain facts as to each of the nineteen parties complained against, we are making this general finding of fact applicable to

all of the individuals mentioned in the complaint.

Under the filed rates in this division of the Portland Water District, the first faucet is $5; flush closet, $4; bath tub, $4; first horse, $4; additional horses, $2; first cow, $2; additional cows, $1; (if water is carried to animal, one-half above rate applies); hose, $5. These are the rates in general applicable to the parties before us. There are, of course, other rates, for different services on file, but these rates mentioned cover the fixtures referred to by the various customers parties to the complaint.

We find from the evidence that the several individuals are knowingly accepting and receiving rebates and discounts, and that discrimination exists in respect to the service rendered to them by the Portland Water District, and that service is being rendered at a rate less than that named in the schedules in force in the town of Gorham, all of which is unlawful and prohibited by reason of § 38, Chap. 62, of the Revised Statutes.

We further find that the rates and charges fixed in each individual contract are unjust, unreasonable, and insufficient, and shall substitute therefor the scheduled rates on file with this Commission, as will appear in our later order.

We will now proceed to discuss, with the foregoing understanding, the case of each of the individuals mentioned in the complaint.

E. F. Gale, of Gorham

[1] The Portland Water District is apparently furnishing E. F. Gale with free water, and this by virtue of an original agreement dated the blank day of November, 1878, recorded August 29, 1892, in Cumberland Registry of Deeds, Book 594, Page 204, wherein the Portland Water Company and Louis J. Brackett, his heirs and assigns, witnessing that in consideration "that Horace Sanborn has granted, and does hereby grant, the said Portland Water Company the right of laying and perpetually maintaining their pipes in and through the premises known as the Sanborn field, and of repairing said pipe; said Portland Water Company agree to furnish to Louis J. Brackett, his heirs and assigns, with water for dwelling house and stable purposes only, according to the present and future rules and regulations of said company for his dwelling house, situated in Gorham, free: said water to be furnished so long as said Louis J. Brackett shall keep his service in repair and observe said present and future regulations and no longer. And this agreement is full settlement and discharge of all damages caused or which may be caused by the laying, maintaining, and repairing said pipe as aforesaid."

In addition to the foregoing document, there was introduced a receipt, so called, dated August 5, 1878, which was recorded in Cumberland Registry, Book 591, Page 195, wherein Brackett acknowledged receipt from Portland Water Company of $148 "in full satisfaction and discharge of all claims for damages in consequence of passing over my land for the purpose of locating, laying down, and maintaining a second main water pipe, of such size as said company may determine to lay in and through the land owned and occupied by me, situated

in the town of Gorham. Said pipe to be laid near the present 20-inch pipe . . . ."

There was also introduced in testimony another receipt, signed by Brackett, dated July 26, 1870, for $148.50, in full of damages caused by laying of the pipe in and through the premises owned and occupied by Brackett, situated in Gorham, known as part of the Swett farm.

Louis J. Brackett deceased, and, according to the testimony, left four children—Mrs. E. F. Gale, the wife of the person mentioned in the complaint of the petitioner; two other sisters, and one brother. There is nothing in the testimony to show that Mr. E. F. Gale is entitled to claim any benefits under the Louis J. Brackett contract or agreement. He holds no easement and does not own the property, and should be billed the regular rates for water service, as now on file with this Commission.

Clifton D. Rogers, of Gorham

[2] Mr. Rogers owns land in Gorham, upon which are located two pipes of the Portland Water District, and claims to be entitled to free water by virtue of a contract made November 29, 1876, recorded in Cumberland Registry, Book 594, Page 200, between the Portland Water Company and Edward Bragdon, his heirs and assigns, witnessing that in consideration "that Edward Bragdon has granted and does hereby grant the said Portland Water Company the right of laying and perpetually maintaining their pipes in and through the premises of said Edward P. M. Bragdon as now laid, and of repairing the said pipe, the said Portland Water Company agree to furnish said Edward Bragdon, his heirs, and assigns, with water for dwelling house purposes only, from the said pipe, through a three-quarter-inch pipe, according to the present and future rules and regulations of said company for his dwelling house situated in said Gorham, free. Said water to be furnished so long as said Edward Bragdon shall keep his service pipe in repair and observe said present and future rules and regulations, and no longer. And this agreement is full settlement and discharge of all damages caused or which may be caused by the laying, maintaining, and repairing said pipe as aforesaid."

Rogers got a deed from Edward Bragdon which recites: "Also conveying all rights that I have with the Portland Water District, formerly Standish Water & Construction Company, to take water for all uses connected with the above-described lot of land with the buildings thereon. This conveyance is made subject to all the rights of the said Standish Water & Construction Company now the Portland Water District, to maintain and repair its water pipes as now laid over and across said premises."

This Commission, in the case of Waldoboro Water Co. v. Itself (1923) P.U.R.1924B, 511, 520, had for consideration a deed which granted to the Waldoboro Water Company the privilege of using the town's reservoir, et cetera, which deed contained, among other provisions, the following: "Provided, however, that in the event the said shoe factory now unoccupied should hereafter at any time be occupied and running with a business of any kind or description, then the said

Waldoboro Water Company shall supply said shoe factory, without cost, to the full capacity of the reservoir if necessary and no more, . . ."

The Commission construed the above to be a covenant and not a condition subsequent and says (page 524): "We find that the town by its deed to the Waldoboro Water Company created an easement in the reservoir for the benefit of the Waldoboro Water Company, and stipulated for free water service for the 'shoe factory' with the knowledge that the state might interfere and supersede the free service agreement, for 'all contracts relating to the public service are entered into in contemplation of the exercise of the right of the state regulatory powers, whenever the public interests may require'; and that 'when one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use and must submit to be controlled by the public for the common good to the extent of the interest he has created.' Re Searsport Water Co. (1919) 118 Me. 382, P.U.R.1920C, 347, 108 Atl. 452. When private property becomes affected with a public interest, it ceases to be a matter of private right only. Munn v. Illinois (1877) 94 U. S. 113, 24 L. ed. 77."

Similar rulings are to be found in other jurisdictions. In Lighthall v. Illinois Bell Teleph. Co. (Ill. 1922) P.U.R.1923A, 11, a subscriber had a written contract for service at a particular rate. By order of the Illinois Commission the company was authorized to collect an increased rate and the Commission held that the higher rate should be collected.

The California Commission, in Re Smith (1922) P.U.R.1923A, 124, held that a perpetual water right to free service cannot be carved out of a supply dedicated to public use.

In Union Dry Goods Co. v. Georgia Pub. Service Corp. 248 U. S. 372, 63 L. ed. 309, P.U.R.1919C, 60, 39 S. Ct. 117, 9 A.L.R. 1420, the plaintiff made a contract for a term of years for electric energy. The Georgia Commission, after the contract had been in effect for almost two years, authorized an increased rate. The Supreme Court held that private contract rights must yield to the public welfare, where the latter is appropriately declared and defined, and the two conflict.

The Pennsylvania Commission in Wayne Title & Trust Co. v. Wayne Sewerage Co. P.U.R.1919D, 404, where deeds from the tract owners conveying portions of the tract as developed contained, inter alias, the following clause "together with the free use of the drainage system of Wayne with the right to connect with the same," ruled that the Commission as an administrative body cannot sustain covenants contained in deeds assuring to the grantees free service.

Following the line of reasoning as applicable to the instant matter, we find the agreement for free water service offends against the law making such discrimination illegal: and we hereby order that said Clifton D. Rogers, of Gorham, be charged the regular schedule of rates filed by said Portland Water District with this Commission.

Walter L. Libby, of Gorham

[3] The petition complained

against one Frank E. Carty, and at the hearing Walter L. Libby, who purchased the Frank E. Carty property in Gorham, appeared and testified; raised no objections to the proceedings. We are going to deal with the case as if Mr. Libby had been an original party and consider him substituted for Frank E. Carty.

Mr. Libby's claim for free water is predicated upon an agreement dated July 9, 1901, by and between the Standish Water & Construction Company, its successors and assigns, and the Buxton & Hollis Savings Bank, its successors and assigns, wherein it was witnessed that in consideration "that said Buxton & Hollis Savings Bank has granted and does hereby grant, the said Standish Water & Construction Company, its successors and assigns, the right of laying, repairing, and perpetually maintaining a 30-inch cast iron pipe through its premises in the town of Gorham, . . . said pipe being laid between the land now owned by George H. Files and the highway, a distance of 21 rods, more or less, the said Standish Water & Construction Company agrees to furnish a supply of water for its dwelling house and stable, situated on said premises, through a three-quarter-inch service pipe, according to the present and future rules and regulations of said company. Said water to be furnished free, so long as said pipe shall be maintained through said premises. The service pipe to be laid and kept in repair by said company at its own expense. And this agreement is in full settlement and discharge of all damages caused to said premises, or which may be caused by the laying, repairing, and perpetually maintaining said pipe as aforesaid."

Apparently this property was sold by the Buxton & Hollis Savings Bank to Robert Shackford. He, in turn, sold it to Lester Hanson; Lester Hanson sold it to Frank E. Carty, and Frank E. Carty sold it to Walter L. Libby.

There is no testimony in the case indicating that the rights to free water were transferred to or by any of Mr. Libby's predecessors in title on their conveyance of the property. It would, therefore, seem obvious that Mr. Libby is not in a position to claim free water and that he should pay the established rates of the Portland Water District. In case there actually were assignments of its rights by Buxton & Hollis Savings Bank, our conclusions reached in the C. D. Rogers matter would be applicable.

Effie P. Brown, of Gorham

[4] The person mentioned in the petition against whom complaint was made was Fred Brown but Effie P. Brown appeared and testified, and we are considering her as a party to the case, in substitution of said Fred Brown, and by reason of her appearance, and participation in the case without objection, consider sufficient service as having been made. Free water is claimed by virtue of an agreement, dated November 29, 1876, between the Portland Water Company and Abram Tyler, his heirs and assigns, recorded in Cumberland Registry, Book 594, Page 199, which witnesses "That for and in consideration that Abram Tyler has granted, and does hereby grant the said Portland Water Company, the right of laying

and perpetually maintaining their pipe in and through the premises of said Abram Tyler as now laid, and of repairing the said pipe and Portland Water Company agrees to furnish said Abram Tyler, his heirs and assigns, with water for dwelling house purposes only from the said pipe through a three-quarter-inch pipe according to the present and future rules and regulations of said company, for his dwelling house situated in said Gorham, free. Said water to be furnished so long as said Abram Tyler shall keep his service pipe in repair and observe said present and future rules and regulations and no longer. And this agreement is full settlement and discharge of all damages caused or which may be caused by the laying, maintaining, and repairing said pipe as aforesaid."

There was introduced in testimony a further agreement, dated April 15, 1901, between Standish Water & Construction Company, its successors and assigns, and Abram Tyler, his heirs and assigns, witnessing that for and in consideration "that Abram Tyler has granted, and does hereby grant the said Standish Water & Construction Company, its successors and assigns, the right of laying, repairing, and perpetually maintaining a 30-inch cast iron pipe through his premises in said Gorham, said pipe being laid across said premises between the land now owned by W. M. Bolton and the land owned by Edwin T. Libby, a distance of 50 rods, more or less, the said Standish Water & Construction Company agrees to pay said Tyler the sum of $50. And this agreement is in full payment and discharge of all damages caused to said premises, or which may be caused by the laying, repairing, and perpetually maintaining said pipe as aforesaid."

There is nothing in the record to show what was included in the deed from Abram Tyler to Alice J. Lord, and subsequent one, but the testimony shows that when Alice J. Lord died, she left the property to Alice Butterfield and Harry Butterfield, jointly, and that it was deeded to Effie P. Brown by the Butterfields.

On November 1, 1927, an agreement between the Portland Water District and Alice J. Lord was made in writing, setting forth that the water district is the successor in title to the property formerly of the Portland Water Company, and that said Lord is the heir of and owner of the farm and buildings formerly belonging to Abram Tyler, and that the Portland Water Company and Abram Tyler entered into an agreement, dated November 29, 1876, to which we have previously referred, and that whereas Tyler, as an inducement to sign the aforementioned agreement, was promised by the Portland Water Company free water for his stable and the company did, in fact, run a service pipe to the stable of Tyler's, thence to the dwelling house; and thereafter furnished water to the stable and dwelling house free, which agreement by the said Portland Water Company and by the said Portland Water District covering a period of more than thirty years, and recited further that a controversy had arisen between the district and Lord relative to the furnishing of water free. The district and Lord mutually agreed that in con-

sideration of $1, each to the other paid, that "Said water district will, and its successors and assigns shall, furnish to said Lord, her heirs and assigns, water from its pipe or main where the same runs through the premises of said Lord, free, for the dwelling house on said premises and free for the stable on said premises, for one horse and not exceeding four head of cattle, provided said Lord, her heirs and assigns, observe the present and future rules of said water district, except in relation to rates for use of water, and keeps the service pipes on said premises in repair, and said Lord has agreed that she will, and her heirs and assigns shall, pay for all water used in said stable for more than one horse and four head of cattle the regular farm rates for any excess in the number thereof."

On August 14, 1937, Harry L. Butterfield, executor of the estate of Alice J. Lord, assigned rights under this agreement to Effie P. Brown, her heirs and assigns.

There is nothing in the record to indicate any conveyance or attempted conveyance of the rights originally belonging to Abram Tyler to Effie P. Brown. The only rights Effie P. Brown apparently had are those rights under the agreement of November 1, 1927, made by the Portland Water District with Alice J. Lord. This attempted contract for service at other than the regular rates is void without the approval of this Commission, assuming the contract comes within § 38 of Chap. 62 of the Revised Statutes. If it does not come within § 38, it contravenes the present law. That contract, lacking Commission approval, we cannot recognize, and therefore must rule on the grounds previously set forth that Effie P. Brown pay the rates established by the Portland Water District.

[Findings omitted as to several customers where similar facts and conclusions appear.]

Horace H. Stevens, of Gorham

[5] Notice was given to Fred E. Stevens but Horace H. Stevens appeared by attorney and participated without objection in the hearing.

Across Mr. Stevens' land the mains of the Portland Water District extend, and he claims free water by reason of an agreement made the 16th day of February, 1880, between the Portland Water Company, and Scott Libby, of Gorham, witnessing "That for and in consideration of $50 paid to said company they do hereby agree to supply said Scott Libby, free of charge, with water from its 24-inch main pipe, for dwelling house and stable purposes only." Mr. Libby, according to the evidence, assigned his rights under this contract to Wilbur Stanton, February 18, 1895, and Stanton assigned his rights in the contract to Isaac and Horace H. Stevens, February 21, 1906. We interpret this Libby agreement as a purely personal contract, which terminated with his decease, he having died, according to the record, some time prior to February 18, 1895. Mr. Stevens should, therefore, pay the established rates.

[Findings omitted as to several customers where similar facts and conclusions appear.]

A. Erlon Mosher, of Gorham

Mr. Mosher owns land in Gorham, over which pass the mains of the Portland Water District. Mr. Mosher says he understood that his grandfather, Mark Mosher, had a contract for free service. He did not produce the contract or a copy thereof, and testifies that he had never had the agreement but understood his grandfather had one. The Portland Water District stated that it had a receipt for all damages but no contract. Subsequently, the following paper was admitted in testimony:

"Brunswick, Feb. 23, 1880.

"I called at the office of P. Water Co. and informed the clerk that according to the agreement as I remembered you were to have the water on the conditions indicated in your letter of Jan. 5, 1880, and I think I can affirm this before any tribunal. Clerk said that they simply wanted to know the fact. I gave to him the fact.

I am yours sincerely,
(Signed) C. J. Gilman.

Addressed to—
'Mark Mosher, Esq.
Farmer—
Saccarappa,
Town of Westbrook,
Me.' "

We find no evidence entitling Mr. Mosher to a legitimate claim for free service, and he should pay the filed rates.

Also notice of hearing was ordered given to Annie Kelley, of North Windham, and Alphonse Hamel, of Gorham. Notice was proved to have been given as ordered but neither appeared. The Portland Water District offered no evidence regarding them and we make no findings as to either of them.

CALIFORNIA RAILROAD COMMISSION

Re Los Angeles Railway Corporation

[Decision No. 31153, Application No. 22058.]

Security issues, § 80 — Refunding — Exchange of bonds.

1. Issuance of first mortgage refunding bonds for certain outstanding bonds which a corporation is unable to pay, should be authorized when the plan is fair to the bondholders, imposes no expense upon them, and assures them the same income they have enjoyed and the payment of their bonds at par if they are redeemed through the use of sinking-fund moneys, although it is for the bondholders to determine whether they can realize more by exercising their legal rights in a possible bankruptcy proceeding than by accepting the plan of exchange proposed, p. 382.

Security issues, § 115 — Refunding plan — Restriction on expenses.

2. An agreement, employing an investment banking group to solicit the deposit of underlying bonds pursuant to a plan and agreement of exchange and obligating the company to pay all fees for legal services of counsel

of the investment banking group, should be amended so that the company need not pay more than an amount of legal fees approved by the Commission, p. 382.

Mortgages, § 5 — Maintenance clause — Commission approval of engineer.

3. A provision in a trust indenture securing the payment of bonds, providing that if the company and the trustee cannot agree on the appointment of an engineer to determine whether the company is properly maintaining its property, such engineer shall be appointed by the Commission, should be amended to meet the contingency which might arise if the Commission deem it inadvisable to make the appointment, p. 383.

[August 1, 1938.]

APPLICATION *for order authorizing issuance of refunding bonds in exchange for certain outstanding bonds pursuant to plan and agreement of exchange; application granted with modifications.*

APPEARANCES: Gibson, Dunn & Crutcher, by S. M. Haskins, Homer D. Crotty, Woodward M. Taylor, and E. H. Conley, for applicant; Ray L. Chesebro, City Attorney of Los Angeles, by John W. Holmes, Deputy City Attorney of the city of Los Angeles, interested party; J. H. Wolfe, for Venice Blvd. Committee of 1000 and Bay District Property Owners Association, interested parties; Wm. Green, for Clydia A. Gore, an interested party.

WAKEFIELD, Commissioner: This application involves the issue of $6,860,000 of first mortgage refunding 5 per cent bonds to refund the following bonds:

Los Angeles Railway Company first mortgage 5% gold bonds due October 1, 1938	$3,867,000
Los Angeles Traction Company first consolidated mortgage 5% gold bonds due December 1, 1938	250,000
Los Angeles Railway Corporation first and refunding mortgage 5% gold bonds due December 1, 1940	2,743,000
Total	$6,860,000

The Commission by its order of June 30, 1938, set the above-entitled matter for public hearing before Commissioner Wakefield for Thursday, July 26, 1938. By the same order it directed applicant to mail to all known holders of said bonds and publish a notice of said hearing. A copy of said notice is attached to said order of June 30, 1938, as Exhibit A. The hearing was had on said July 26th, at which time applicant filed an affidavit showing that it had mailed and published said notice, as directed by the Commission. At said hearing all persons interested in the refunding of said bonds were accorded the opportunity to be heard.

The company's plan and agreement of exchange is filed in this proceeding as Exhibit 12. It may be summarized as follows:

(a) The holders of the aforesaid bonds will be asked to deposit their bonds with Security-First National Bank of Los Angeles or with Bank of America, National Trust and Savings Association who will issue to them deposit receipts, similar in form to the deposit receipts filed in this proceeding as Exhibits 9 or 10 or 11.

(b) If the plan becomes effective the holders of deposit receipts (Exhibit 9) representing Los Angeles Railway Company first mortgage 5 per cent gold bonds due October 1, 1938, and the holders of deposit receipts (Exhibit 10) representing Los Angeles Traction Company first consolidated 5 per cent gold bonds or the holders of said bonds, will upon the surrender of said deposit receipts or said bonds receive, on a par for par basis, Los Angeles Railway Corporation Series A, first mortgage refunding 5 per cent bonds, dated October 1, 1938, and due October 1, 1948. The holders of deposit receipts (Exhibit 11) representing Los Angeles Railway Corporation first and refunding mortgage 5 per cent gold bonds due October 1, 1940, or the holders of said bonds will, upon the surrender of said deposit receipts or said bonds, receive on a par for par basis, Los Angeles Railway Corporation, Series B, first mortgage refunding 5 per cent bonds dated October 1, 1938, and due October 1, 1950. Series A and Series B bonds will be issued under a trust indenture which limits the issue of Series A bonds to $4,117,000; of the Series B bonds to $2,743,000; and the total to $6,860,000. The trust indenture will be a first lien on all the property now or hereafter owned by the company and a first lien on the company's equity in equipment being purchased through the issue of equipment trust certificates or other forms of indebtedness. A copy of the trust indenture is filed in this proceeding as Exhibit 7.

(c) After the issue of said bonds and until a change is approved by the company, the trustee, and the holders of at least two-thirds of the outstanding bonds, the company must deposit with the trustee $400,000 on August 1, 1939, and the sum of $200,000 on each first day of February and first day of August in each year thereafter to and including August 1, 1950. Until October 1, 1948, 70 per cent of said cash deposits and 70 per cent of all other amounts paid into the sinking fund under provisions of the trust indenture shall be used to purchase, redeem, or retire Series A bonds. Until October 1, 1948, the remainder of the moneys in the sinking fund, to wit: 30 per cent shall be used to purchase, redeem, or retire Series B bonds. All moneys paid into the sinking fund after October 1, 1948, shall be used to purchase, redeem, or retire Series B bonds.

(d) The company may redeem at its option all of said Series A and Series B bonds outstanding, upon any interest payment date by paying the principal thereof plus a premium of one per cent on the principal thereof. If bonds are called to invest sinking-fund moneys, they are redeemable at their face value.

(e) The holders of the company's $9,000,000 general mortgage 5 per cent bonds dated December 1, 1936, and due December 1, 1971, the payment of which bonds is secured by a trust indenture which is a second lien on applicant's properties, have given their consent or will give their consent, to modify the terms of said trust indenture, so that, among other things, the 5 per cent interest accruing on said bonds need not be paid unless earned. The interest due and payable semi-annually on said bonds shall be computed by taking from the gross earnings of the company from all sources for the

then preceding interest period the following:

(a) All operating expenses for such period, as such operating expenses may be defined in the accounting rules from time to time in force of the Railroad Commission of the state of California or other analogous authority having jurisdiction in the premises (exclusive of depreciation);

(b) Interest payments on underlying mortgages for such interest period, and interest charges on all other indebtedness;

(c) Taxes of all kinds not otherwise included under operating expenses for such interest period;

(d) An amount equal to full depreciation for such interest period at rates of depreciation computed in accordance with sound engineering and accounting practice, which rates of depreciation shall be certified by a firm of public accountants of national reputation as reasonable and adequate provision for depreciation of the depreciable properties of the corporation. (The corporation agrees that the accounts of the corporation will be audited annually by a firm of certified public accountants of national reputation.) Said rates of depreciation, however, shall not exceed the rates of depreciation commonly allowed by the Railroad Commission of the state of California on classes of property so depreciated.

The interest on said general mortgage bonds is limited to 5 per cent per annum and is cumulative from and after June 1, 1938. Said accumulated interest can be paid only from net income and not from money appropriated for depreciation purposes.

A copy of the supplemental trust indenture is filed in this proceeding as Exhibit 8.

(f) The Huntington Land and Improvement Company, Henry E. Huntington Library and Art Gallery, Collis P. and Howard Huntington Memorial Hospital, and Security-First National Bank of Los Angeles, as trustee under the last will and testament of Henry E. Huntington, deceased, jointly and severally agree to purchase a total of not to exceed $360,000 face value of Series A and not to exceed $240,000 face value of Series B bonds, if they can be acquired, within a period of three years from the date said bonds are issued at a price not in excess of 95 per cent of the principal amount thereof. They are not obligated to acquire more than $120,000 of Series A bonds and not more than $80,000 of Series B bonds in any one year. If the said bonds cannot be acquired within three years after their issue, the time of purchase is extended two years. Said purchasers now hold $215,000 of Los Angeles Railway Company bonds due October 1, 1938, and $147,000 of Los Angeles Railway Corporation bonds due December 1, 1940, or a total of $362,000. They agree to deposit said bonds under the refunding plan. They further agree that the new bonds received in exchange therefor and said $600,000 of bonds they agree to purchase will be held by them for a period of five years from their date of issue as to the said $362,000 of bonds, and the date of acquisition as to the $600,000 of bonds, except they may tender them to the sinking fund when bonds are called by the trustee, or sell them upon condition that the transferee agrees to hold them during the 5-year period.

A copy of the purchase agreement is filed in this proceeding as Exhibit 13.

Los Angeles Railway Corporation as of June 30, 1938, reports in Exhibit 2 its assets and liabilities as follows:

The $2,000,000 of common stock is represented by 200,000 no par shares. They are all owned by Security-First National Bank of Los Angeles, as trustee under certain trusts created un-

Assets

INVESTMENTS		$47,965,107.26
Road and equipment	$47,701,642.96	
Sinking funds	50,000.00	
Notes	180,000.00	
Bonds	28,957.20	
Deposit in lieu of property sold	4,507.10	
CURRENT ASSETS		$1,419,682.30
Cash	$744,070.18	
Loans and notes receivable	5,000.00	
Accounts receivable	87,689.10	
Material and supplies	560,825.52	
Other current assets	22,097.50	
UNADJUSTED DEBITS		$131,393.93
Prepaid insurance	$30,548.38	
Prepaid taxes	19,858.14	
Other unadjusted debits	80,987.41	
Total assets		$49,516,183.49

Liabilities

CAPITAL STOCK		$10,954,400.00
Common	$2,000,000.00	
Preferred	8,954,400.00	
FUNDED DEBT UNMATURED		$16,970,680.01
Los Angeles Railway Company 5% gold bonds due Oct. 1, 1938	$867,000.00	
Los Angeles Traction Company 5% gold bonds due Dec. 1, 1938	250,000.00	
Los Angeles Railway Corp. 5% gold bonds due Dec. 1, 1940	2,743,000.00	
Los Angeles Railway Corporation 5% bonds due Dec. 1, 1971	9,000,000.00	
Trust certificates	630,000.00	
Equipment obligations	480,680.01	
CURRENT LIABILITIES		$783,843.84
Loans and notes payable	$24,997.70	
Audited accounts and wages payable	527,350.93	
Accrued interest	98,308.33	
Tax liability	131,800.80	
Other current liabilities	1,386.08	
UNADJUSTED CREDITS		$18,838,295.79
Accrued depreciation	$18,716,213.88	
Unredeemed tokens	117,934.25	
Other unadjusted credits	4,147.66	
CORPORATE SURPLUS		$1,968,963.85
Funded debt retired through surplus	$3,345,000.00	
Sinking-fund reserves	6,094,935.56	
Total appropriated surplus	$9,439,935.56	
Profit and loss (Red)	7,470,971.71	
Total liabilities		$49,516,183.49

der the will of the late Henry E. Huntington, deceased.

The $8,954,400 of preferred stock is represented by 89,544 shares of preferred stock of the par value of $100 per share. About 79.6 per cent of the preferred stock is owned by Security-First National Bank of Los Angeles, as trustee under certain trusts created under the will of the late Henry E. Huntington, deceased, and the remaining 20.4 per cent of said preferred stock is owned by Huntington Land and Improvement Company.

The $9,000,000 of general mortgage bonds due in 1971 are owned by the following:

Henry E. Huntingham Library and Art Gallery	$3,822,000
Collis P. and Howard Huntington Memorial Hospital	600,000
Huntington Land and Improvement Co.	93,000
Security-First National Bank as trustee under various trusts	4,285,000
Citizens National Trust & Savings Bank as trustee under various trusts	200,000
Total	$9,000,000

The company for 1936 and 1937 reports its income available for depreciation and interest as follows:

Item	1936	1937
Total income for depreciation and interest	$2,252,000	$2,020,000
Less amounts appropriated for depreciation	1,338,000	1,315,000
Amount available for interest	$914,000	$705,000

The income appropriated for depreciation cannot be used to pay accumulated or any other interest.

[1] The record shows that the Los Angeles Railway Corporation has not sufficient funds on hand to pay the $4,117,000 of bonds maturing this year. Its efforts to borrow money to pay said bonds and the $2,743,000 of bonds due in 1940 have been unsuccessful. It has therefore concluded to ask the holders of said $6,860,000 of bonds to continue their investment in its properties and accept on a bond-for-bond basis, said Series A and said Series B bonds in payment for the bonds they now own.

I appreciate that the holders of the underlying bonds possess certain legal rights under the trust indentures securing the payment of their bonds. It is, of course, for them to determine whether they can realize more by exercising those legal rights in a possible bankruptcy proceeding than by accepting the plan of exchange proposed by the company. In my opinion the plan proposed by the company is eminently fair to the bondholders. It imposes no expense upon them whatsoever. It assures them the same income they have enjoyed and the payment of their bonds at par if they are redeemed through the use of sinking-fund moneys. If, for any reason the company is declared in default under the new trust indenture, the litigation ensuing should be much less expensive than litigation that might now be precipitated by three different groups of bondholders.

[2] The company has employed William R. Staats Co., Blyth & Co., Inc., Dean Witter & Co., and Bennett Richards & Hill to solicit the deposit of the underlying bonds. A copy of the agreement between the company and the investment banking group is filed in this proceeding as Exhibit 14. In the agreement as now drafted the company agrees to pay all fees for legal services of counsel of the investment banking group. The agreement should in my opinion be amended so

that the company need not pay more than $7,500 of the legal fees of counsel for the investment banking group.

[3] Section 16 of Art. III of the proposed trust indenture securing the payment of said Series A and Series B bonds, provides that if the company and the trustee cannot agree on the appointment of an engineer to determine whether the company is properly maintaining its property, such engineer shall be appointed by the Railroad Commission of the state of California. Inasmuch as conditions may arise which make it inadvisable for the Commission to make the appointment, the said section should be amended to meet such a contingency.

I recommend the following form of order:

ORDER

The Los Angeles Railway Corporation having asked permission to issue $6,860,000 of first mortgage refunding 5 per cent bonds in exchange for an equivalent principal amount of bonds secured by underlying mortgages, bond for bond, and deposit receipts therefor in connection with said exchange, to execute a trust indenture to secure the payment of said $6,860,000 of bonds; to modify its general mortgage 5 per cent bonds and the trust indenture securing the same by executing a supplemental trust indenture, and having asked the Commission to approve the fairness of the terms and conditions of the exchange of bonds referred to in the foregoing opinion, a public hearing having been held by me on July 26, 1938, after due notice thereof, and having considered the evidence submitted at such hearing, I find that the plan and agreement of exchange filed in this proceeding as Exhibit 13, if modified as indicated in the foregoing opinion and in this order, is fair as to the terms and conditions of the issue, exchange and modifications of the bonds, and the issue of deposit receipts referred to in said foregoing opinion; that the money, property or labor to be procured or paid for by the issue of said $6,860,000 of bonds is reasonably required for the purposes herein stated, and that the expenditures for said purposes are not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

It is hereby *ordered* as follows:

(1) Los Angeles Railway Corporation may, after the effective date hereof and prior to December 1, 1940, issue $4,117,000 face amount of first mortgage refunding 5 per cent bonds, Series A, dated October 1, 1938, due October 1, 1948, in exchange for an equivalent face amount of bonds secured by the trust indenture of Los Angeles Traction Company, dated December 1, 1898, and by the trust indenture of Los Angeles Railway Company, dated January 17, 1899, said exchange to be on a basis of bond for bond.

(2) Los Angeles Railway Corporation may, after the effective date hereof and prior to December 1, 1940, issue $2,743,000 face amount of first mortgage refunding 5 per cent bonds, Series B, dated October 1, 1938, and due October 1, 1950, in exchange for an equivalent face amount of bonds secured by the trust indenture of Los Angeles Railway Corporation, dated November 21, 1910, said exchange to be on a basis of bond for bond.

(3) Los Angeles Railway Corpora-

tion may, for the purpose of carrying out said exchange of bonds, issue deposit receipts similar in form to the deposit receipts filed in this proceeding as Exhibits 9, 10, and 11.

(4) Los Angeles Railway Corporation may execute a trust indenture in substantially the same form as the trust indenture filed in this proceeding as Exhibit 7 for the purpose of securing the payment of said Series A and said Series B first mortgage refunding 5 per cent bonds, provided that the Railroad Commission of the state of California reserves the right to refuse to appoint or participate in the selection of the engineer mentioned in § 16 of Art. III of said trust indenture.

(5) Los Angeles Railway Corporation may execute a supplemental trust indenture in substantially the same form as the supplemental trust indenture filed in this proceeding as Exhibit 8 and modify its general mortgage 5 per cent bonds, as indicated in said supplemental trust indenture.

(6) Los Angeles Railway Corporation may not expend more than $7,500 to pay fees of counsel for the investment banking group employed to aid, advise, and assist it in obtaining the deposit of said underlying bonds and carrying into effect said plan and agreement of exchange.

(7) Los Angeles Railway Corporation shall file with the Railroad Commission on or before January 31, 1939, a statement showing in detail the expenses incurred by it, on or before December 31, 1938, to put into effect said plan and agreement of exchange. Statements showing expenses incurred subsequent to December 31, 1938, shall be filed at such time as they are requested by the Commission.

(8) The authority herein granted will become effective when Los Angeles Railway Corporation has paid the fee prescribed by § 57 of the Public Utilities Act, which fee is $3,930.

(9) Los Angeles Railway Corporation shall file with the Railroad Commission quarterly reports showing the amount of bonds issued during the quarter, the names of the persons to whom said bonds were issued and the amount and name of the bonds surrendered by each person. The first report shall be filed on or before January 31, 1939, and shall cover the period to and including December 31, 1938. Reports for subsequent quarters shall be filed within thirty days after the close of each quarter.

(10) Los Angeles Railway Corporation shall file with the Railroad Commission within thirty days after their execution two copies of the trust indenture securing the payment of its $6,860,000 of first mortgage refunding 5 per cent bonds, and two copies of the supplemental trust indenture modifying the terms of its $9,000,000 of general mortgage 5 per cent bonds.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the state of California.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Pennsylvania Edison Company

[File 011.1.]

Commissions, § 58 — Assessments against utilities — Traveling expenses.

1. The words "traveling expenses" as used in a statute authorizing the assessment of traveling expenses of Commission employees against public utilities include not only transportation but also subsistence, p. 386.

Commissions, § 58 — Assessments against utilities — Charge for Commission employee — Meaning of rule.

2. A rule of the Commission providing that a charge against a public utility shall be made whenever "an employee of the Commission is engaged upon a field investigation of a person or corporation for seven hours in one day" authorizes the making of a charge when some one employee spent seven hours in the investigation, p. 390.

Commissions, § 58 — Assessments against utilities — Daily charge for Commission employee.

3. A charge for a full day's work for a Commission employee investigating a public utility is equitable and reasonable and does not deprive the utility of property without due process of law, where the employee works less than seven hours but more than three and one-half hours on that day, in view of the fair assumption from past experience that the employee spends the balance of time traveling while traveling time is not charged as such against the utility, p. 390.

Commissions, § 58 — Assessments against utility — Investigation of affiliate.

4. A regulatory body having authority to investigate the operation of a public utility can charge that utility for time spent in investigating the operations of its affiliate whose stock is owned by, and whose output is all purchased by, that utility, p. 392.

Statutes, § 11 — Interpretation — Punctuation.

5. Punctuation contained in the Acts of Assembly is not official and cannot control the interpretation, p. 394.

Commissions, § 58 — Assessments against utilities — Statutory authorization — Interpretation.

6. Public Utility Law, § 1201 (b), authorizing assessments against utilities for Commission expenses "whenever the Commission, in a proceeding upon its own motion on complaint, or upon an application to it," shall deem it necessary to investigate is to be construed as if there were a comma after the words "proceeding" and "motion," and therefore as authorizing an assessment against the utility for the expense of an investigation taken by the Commission upon its own initiative as distinguished from an investigation instituted upon complaint, p. 394.

[July 25, 1938.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

SPECIAL assessment levied on a power company under statute for salaries and traveling expenses of Commission employees incurred in investigating said company, objected to and heard by Commission; assessment approved.

By the COMMISSION: On April 26, 1937, by an Executive order, the Commission directed its bureau of accounts to make a detailed study of current operating expenses and fixed capital charges for the electric portion of the business of the Penn Central Light and Power Company, which is now Pennsylvania Edison Company, hereinafter referred to as the objector. Pursuant to those instructions, the study was made and a report submitted to the Commission by said bureau. However, the Commission did not, either at that time or at any subsequent date, bring any formal complaint against the electric rates of objector.

Under the provisions of § 1201 (b) of the Public Utility Law, a special assessment was made against objector in the amount of $3,905.21 for salaries and traveling expenses of Commission employees incurred during said study from June 1, 1937, to October 31, 1937. On January 24, 1938, a bill for said special assessment was sent to objector by registered mail.

Under the provisions of § 1201 (c), objector filed objections to this special assessment within fifteen days after receipt of the bill, whereupon it became the duty of the Commission to hear the objections prior to making final determination of the amount due. A hearing was held, at which counsel for objector stated that no objections were being taken to the mathematics or bookkeeping involved in the bills, and no testimony would be offered, but that objector based its objections upon four points involving interpretation of the Public Utility Law and Temporary Regulation No. 13 of the Commission.

[1] The first objection is that the Commission has interpreted the words "traveling expenses," as used in § 1201 (b), to mean transportation and subsistence, whereas objector contends that these words refer only to transportation. Consequently, objector asks that its bill be reduced by the elimination of all charges for hotel rooms, meals, and similar items, collectively termed subsistence, which were incurred by Commission employees while away from Harrisburg during the study, and for which the Commission has reimbursed the employees by expenditures from its appropriation.

Section 1201 (b) of the Public Utility Law (66 PS § 1461b) reads as follows:

"Whenever the Commission, in a proceeding upon its own motion on complaint, or upon an application to it, or in connection with a securities certificate filed with it, shall deem it necessary to investigate the books, records, accounts, practices, and activities of, or make appraisals of the property of, or to render any engineering or accounting service to, any person or corporation, the salaries and traveling expenses of Commission employees, and office space expenditures specifically attributable to such investigation,

appraisal, or service, shall be charged to, and paid by, such person or corporation, and shall not be included in the expenses of the Commission for the purpose of making assessments generally under this section; but the amount so charged to, and paid by, any such person or corporation during any one calendar year shall not exceed one per centum of the gross operating revenues of such person or corporation during the next preceding fiscal year."

It is the opinion of the Commission that the words "traveling expenses" as used in said section are not to be construed in such a narrow sense so as to refer only to transportation charges. It is a familiar rule of statutory interpretation that words and phrases are construed according to the approved usage of the language, and that words of common use are to be taken in their ordinary and general sense.

Although in McKean County v. Young (1899) 11 Pa. Super. Ct. 481, and Commonwealth v. Moore (1912) 49 Pa. Super. Ct. 321, in which the Acts of Assembly pertaining to salaries and expenses of county commissioners were construed, it was held that the words "traveling expenses" did not include subsistence, it is our opinion that the ruling in those cases is not controlling in the instant case. Those decisions are based on the fact that the cost of subsistence is provided for by salary or per diem compensation. That fact cannot have any bearing in this case. Section 1201 (a) provides that all (except certain items not pertinent here) of the expenses of the Commission shall be paid by utilities. There can be no question that subsistence expenses are included in the words "all expenses": Susquehanna County Auditors' Report (1935) 118 Pa. Super. Ct. 47. Section 1201 (a) also enjoins the Commission to be equitable and reasonable in its administration, and § 1201(f) requires that each group shall bear the approximate cost of regulating that group. It is apparent that to carry out the spirit of § 1201, care must be exercised so far as possible that no utility shall bear the costs incurred in regulating another. But this can occur only if "traveling expenses" include subsistence. Otherwise, since § 1201 (a) provides that all (except certain items) of the expenses of the Commission shall be paid by utilities, and since subsistence incurred in investigating a given utility would not be chargeable against it, it follows that such costs would be borne in part by each utility in the group to which the investigated utility belongs. That certainly was not the intention of the legislature.

It is very evident that when the legislature used the words "traveling expenses" in § 1201 (b), it intended those words to include subsistence charges. The appropriation to the Commission for the current bienium was made in the following words: (Act 103–A, approved July 2, 1937.)

" . . . the payment of salaries, wages, or other compensation of a secretary and other employees, and for the payment of *general expenses,* supplies, printing, and equipment necessary for the proper conduct of the work of the Commission, the sum of $3,200,000." (Note: Amount reduced by the governor to $2,900,000.)

Section 6 of that act reads as follows:

"The term 'general expenses' shall include all printing, binding and stationery, food and forage, materials and supplies, traveling expenses, motor vehicle supplies and repairs, freight, express, and cartage, postage, telephone and telegraph rentals and toll charges, newspaper advertising and notices, light, heat, power, and water, contracted repairs, rent of real estate and equipment, premiums on workmen's compensation insurance, premiums on policies of liability insurance covering the operation of permanently assigned automobiles, the purchase of equipment and machinery other than passenger motor vehicles, and all other incidental costs and expenses, including payment to the department of property and supplies of mileage charges for the use of automobiles, and of expenses or costs of service incurred through the purchasing fund."

On June 1, 1931, the budget secretary issued his Circular No. 4, entitled "Classification of Expenditures by Objects," which prescribes a system of accounts for all spending agencies in the executive branch of the commonwealth. Below are two columns, the first showing the above definition of "general expenses" in tabular rather than textual form; the second showing the titles of all the accounts prescribed in Circular No. 4, from the first account listed to account 53, in their proper order:

Act 103–A says the term general expenses shall include	Circular No. 4 says the Commission shall keep accounts entitled:
(Not mentioned in definition, for these items are mentioned specifically in appropriation)	11. Salaries 12. Wages 13. Fees
printing, binding, and stationery,	21. Printing, Binding, and Stationery
food and forage,	22. Food and Forage
materials and supplies,	23. Materials and Supplies
traveling expenses,	31. *Traveling Expenses*
motor vehicle supplies and repairs,	32. Motor vehicle Supplies and Repairs
freight, express, and cartage,	33. Freight, Express, and Cartage
postage,	34. Postage
telephone and telegraph rentals and toll charges,	35. Telephone and Telegraph
newspaper advertising and notices,	36. Newspaper Advertising and Notices
light, heat, power, and water,	41. Light, Heat, Power, Water, Sewage, and Fuel
contracted repairs	42. Contracted Repairs
rent of real estate and equipment	43. Rent of Real Estate 44. Rent of Equipment
premiums on workmen's compensation insurance, premiums on policies . . . ,	45. Insurance, Surety and Fidelity Bonds
	46. Other Maintenance Services and Expenses
	51. Motor Vehicles
	52. Live Stock
the purchase of equipment and machinery, etc.	53. Equipment and Machinery

From this comparison, it is obvious that the legislature in defining "general expenses" had in mind those expenses properly chargeable to the corresponding accounts prescribed by Circular No. 4, and, more particularly, that when it said "general expenses" shall include "traveling expenses," it meant those expenses chargeable to "Account 31. Traveling Expenses." The text

of Account 31 from Circular No. 4 is as follows:

"*Traveling Expenses.* Charge to this account the expenditures actually incurred by state employees while traveling and engaged in state business including all train fare, street car and bus fares; Pullman chair and berth tickets; the rentals of automobiles; taxi fares; the cost of rooms and meals; overnight storage of automobiles; mileage charges to the department of property and supplies; expenses reimbursable for use of private automobiles and all incidental traveling expenses such as telephone tolls, telegrams, tips, etc. Include in this account the reimbursements for traveling expenses of persons employed on a fee basis."

It should be borne in mind that the same legislature which enacted the appropriation bill also enacted the Public Utility Law. It is highly improbable that when the legislature made a grant to the Commission from the general fund, it meant "traveling expenses" to include subsistence, but when it recited how the general fund should be reimbursed for such grant, it meant to exclude subsistence from the same term.

Furthermore, it is suggested that if the contention of the utilities is correct, and only transportation costs are chargeable, the Commission could very well insist that its employees return to headquarters from the field each day. Thus, under the utilities' interpretation, if the Commission required an employee engaged on work in Philadelphia to incur daily $6.20 train fare, $1 Pullman fare, and perhaps $1 taxi fare, the total of $8.20 could be charged to the utility being investigated; but if the Commission required him to stay in Philadelphia over night, incurring a cost of only $6 per day, the utility could not be charged for any part of such cost. If the example is changed so that Pittsburgh or Erie becomes the point of investigation, the utilities' contention becomes even more difficult to defend. If the employee went to Erie, so that he could not possibly return to Harrisburg over night, the Erie utility would only be charged for one fare from Harrisburg to Erie at the beginning of the investigation and one fare from Erie to Harrisburg at its conclusion, while utilities within about three or less hours' traveling distance from Harrisburg would be reimbursing the Commission in full for daily transportation costs. Under these circumstances, the restriction of the meaning "traveling expenses" to transportation charges is illogical.

The words "traveling expenses" have been construed by the appellate courts of other states to include subsistence expenses.

In State ex rel. Scott v. McClure (1914) 19 N. M. 389, 143 Pac. 477, the supreme court of New Mexico held that the provisions of a section of the act of the legislature allowing district attorneys their actual traveling expenses incurred while in discharge of their duties, authorizes the allowance to such district attorneys of expenses contracted for board and lodging, where such expense is incurred while the official is absent from his usual place of abode.

The supreme court of Arizona, in Van Veen v. Graham County (1910) 13 Ariz. 167, 168, 108 Pac. 252, held likewise where the act provided:

"The court reporter shall be allowed his actual traveling expenses in attending the district court away from his official residence."

In Nielsen v. Richards (1925) 75 Cal. App. 680, 683, 243 Pac. 697, 698, it was said: "The words 'traveling expenses' have a definite legal meaning in reference to officers and employees traveling from place to place in the state of California, and include not merely means of locomotion or transportation, but room rent and meals."

Also see Corbett v. State Board of Control (1922) 188 Cal. 289, 204 Pac. 823.

For the reasons above stated, the Commission overrules the first objection.

[2, 3] The second objection is that the charges made against objector are not in accord with the Commission's Temporary Regulation No. 13, issued November 10, 1937, the pertinent portions of which read:

"Rule 1. A charge shall be made whenever an employee of the Commission is engaged upon a field investigation of a person or corporation for seven hours in one day, or a total of seven hours at the end of one day and the beginning of the next day.

"Rule 2. If a charge is to be made as determined under § 1201 (b) of the Public Utility Law and Rule 1 of this Regulation, such charge shall include:

"(a) For each Commission regular employee engaged in such investigation one two-hundred-and fiftieth of his annual salary, and for each Commission temporary employee, his per diem rate, for each calendar day (or any fraction thereof in excess of three and one-half hours) spent upon such investigation.

"(b) The traveling expenses of all Commission employees engaged in such investigation; provided, however, that if a Commission employee shall engage in field investigations of two or more persons or corporations before returning to his official headquarters, the traveling expenses of the employee shall be allocated in the proportion that the number of hours spent upon investigating each person or corporation bears to the number of total hours spent upon investigating all persons or corporations during the trip.

"(c) The rental expended by the Commission for office space engaged for use in such investigation."

The Penn Central Light and Power Company investigation was not a one-man-one-day affair, but an inquiry requiring service in the field of a number of employees for varying periods. In June, 1937, a staff of Commission auditors were examining the books of objector, and on one of the days during the conduct of such examination, one auditor worked for six hours. (There were other similar occurrences which need not be discussed in determining the principles governing the matter.) In charging objector for the cost of this investigation, the Commission included in the bill the auditor's salary for the day upon which he worked six hours, and it is this charge to which the company files objection in the following language:

"It is respectfully submitted that under the Commission's own ruling no charge can be made unless Commission employees worked seven hours in any one day with the specific exception that the seven hours may be an aggregate of the hours at the end of one day and the beginning of the next day.

It is further submitted that any charge which represents a 7-hour work day when the actual period of employment for that day was less than seven hours operates as an additional charge or fee unauthorized by the act or by the regulation of the Commission or by its rules. Such additional fee or charge if imposed constitutes a denial of property without due process of law and is therefore totally invalid and unconstitutional."

Rule 1 does not begin "A charge shall be made for a certain, specified employee of the Commission whenever that employee is engaged . . . for seven hours in one day . . . ," although this is the interpretation placed upon it by objector. The meaning of the rule can be made clearer if there is substituted for the article "an" its meaning according to Webster (Merriam-Webster, Fifth Edition, 1938)—"One; some one;—indicating the singular number of its noun without emphasis." Thus restated, the rule becomes "A charge shall be made whenever some one (or one) employee of the Commission is engaged . . . for seven hours in one day. . . ." There can be no doubt that some one employee spent seven hours in the Penn Central Light and Power investigation, and from that fact and Rule 1, it must be concluded that a charge, some charge, would be made.

The next question would be "What is the extent of the charge?" This is answered by Rule 2. It says that if a charge is to be made (as has been shown), the charge shall include 1/250 of the annual salary of each employee for each calendar day, or fraction of a calendar day in excess of three and one-half hours, spent upon the investigation. The Commission's charge for the employee who works six hours meets this rule.

The objector claims such charge unauthorized by the act, and that charging for the part of the day not worked constitutes a denial of property without due process of law. Section 1201 (a) gives the Commission ample statutory authority for its rule. It reads in part (66 PS § 1461a):

"All of the expenses of the Commission . . . shall be . . . charged to . . . all persons and corporations subject to this act, upon such reasonable basis and in such equitable amounts . . . as the Commission shall, by regulation or order, prescribe in accordance with the provisions of this section."

In prescribing Rule 2 of Temporary Regulation No. 13, the Commission took under consideration (1) that in virtually every instance in which an employee spends less than seven hours on the job, he spends a part of the day traveling, because such partial days occur at the beginning or at the end of the job; (2) that if traveling time were charged for in special investigations, much more bookkeeping by the Commission, and timekeeping by the employee, would be necessary, thereby reducing the hours spent in useful, regulatory work, and that if such time-records were kept, many arbitrary charges would occur because of elements such as waiting for trains, and conducting two or more investigations before returning to headquarters. The Commission concluded, therefore, that traveling time, as such, would not be charged, but that if an employee spent less than seven hours on a job, it could be assumed from past experience that

he spent the balance of time traveling, and that the whole day could be charged to the utility. However, in order to protect the utility from charges for a day spent upon vacation or sick leave, a minimum of three and one-half hours was established. No charge was made for any day upon which the employee spent less than that amount of time upon the job.

It should also be stated that although Commission employees frequently work overtime, holidays, and Saturdays upon utility investigations, no charges were made for this time, because although the utility gained by having the investigation period shortened, the employees are salaried and their overtime does not result in additional expense to the Commission. For example, in some of the instances to which objector objects, the employees were traveling for the remainder of the day, and the aggregate of hours worked and hours traveled was well in excess of seven, but the excess was on the employees' time, and objector was not charged for it. It is common knowledge that although an employee might work only six hours in one day, there are many other times when the same employee works 9-hour and 10-hour days.

Since Rule 2 is merely a device whereby the Commission is reimbursed for time spent by employees in transit, without onerous bookkeeping, since, as a matter of fact, the utilities gain without the Commission losing by such arrangement, and since the difference in dollars and cents is very small, it is concluded that the charge is neither unreasonable or inequitable, nor does it deprive the utilities of any property without due process of law.

For the reasons above stated, the Commission overrules the second objection.

[4] The third objection is as follows:

"Now, in addition, we have a further question. These Commission employees spent in dollars, translated into the number of hours, representing $135.72 approximately, subject to check, in time in going over the books of the Blair Engineering and Supply Company, an admitted affiliate of the Pennsylvania Edison Company. We say as far as that is concerned that you may search the Utility Act from one end to the other, and you will not find any authority for the Commission to examine books of affiliates. The act is full of definitions of affiliates and directions with respect to contracts between public utilities and affiliates, but I think the act very wisely stopped short of authorizing the Commission's employees to examine the books of affiliates, because I doubt their authority to do it."

"I have no doubt that in a proceeding where the question of the operating costs in your contracts became a relevant proceeding, there might be, and there is under this Pennsylvania act the burden of proof on the companies to prove the propriety of the charges, but we are talking about the Pennsylvania act. It does not give, and I say, with all due deference, I don't believe that it could give the right to a Public Utility Commission to examine the books of companies that are not public utilities. You can put the burden of proof on the public utilities and in that way get the information you want to get."

The facts are these: Pennsylvania

Edison Company owned a coal mine from which it supplied itself with fuel for its generating plants. Some years ago, it caused to be incorporated the Blair Engineering and Supply Company, which became its subsidiary, and to which it leased the land upon which its mines were located. Thenceforth to the present time, Blair Engineering and Supply Company has mined coal and has sold its entire output to Pennsylvania Edison Company. As a result, coal charges made by Blair are included in the operating expenses of Pennsylvania Edison, while dividends from the profits of Blair would be considered nonoperating income to Pennsylvania Edison. Depreciation or depletion of the land is not charged on Blair's books, but on those of Pennsylvania Edison. Consequently, it was the duty of the Commission to determine whether or not Blair was selling coal to Pennsylvania Edison at prices in excess of cost, thereby inflating those operating expenses which are a major element in fixing rates. So close is the relationship of these two companies that the books of both companies are in the same office, under the control of the same persons. While these companies appear as two entities, the facts that Pennsylvania Edison owns all of Blair's stock and the mine Blair operates, and that it buys all of Blair's output, indicate that the difference of identity is a mere legal fiction.

The books of Blair were produced directly instead of objector, as owner of Blair's stock, requiring Blair to do so through control of its board of directors.

There can be no question as to the right of the Commission to make a detailed study of current operating expenses and fixed capital charges of a utility. In making such a study as was made in this case, it is essential that any sums paid to an affiliate which are charged on the books of the utility to operating expenses must be thoroughly investigated. This is especially true as to charges for fuel, which is a major item to a utility the size of objector. Such investigation is an important part of the investigation of the utility and, unless so made, the investigation of the utility would be incomplete and practically useless.

Under the provisions of § 906 of the Public Utility Law, it was the duty of objector to furnish the employees of the Commission with all books, papers, etc., necessary to aid them in the investigation and to coöperate with the Commission in the valuation of the property. It was necessary to examine them in order to determine whether the prices paid were reasonable.

If the contentions of objector were correct the hands of the Commission would be tied in investigating operating expenses and fixed capital charges of public utilities where the utility made any purchases from an affiliate.

The right of a regulatory body in an investigation of a public utility to examine the books of an affiliate in order to determine the reasonableness of its charges to the utility has been upheld by the courts.

In Western Distributing Co. v. Kansas Pub. Service Commission, 285 U. S. 119, 124, 125, 76 L. ed. 655, P.U.R.1932B, 236, 239, 52 S. Ct. 283, it was said: "Having in mind the affiliation of buyer and seller and the unity of control thus engendered, we think the position of the appellees is sound, and that the court below was

right in holding that if appellant desired an increase of rates it was bound to offer satisfactory evidence with respect to all the costs which entered into the ascertainment of a reasonable rate. Those in control of the situation have combined the interstate carriage of the commodity with its local distribution in what is in practical effect one organization. There is an absence of arm's length bargaining between the two corporate entities involved, and of all the elements which ordinarily go to fix market value. The opportunity exists for one member of the combination to charge the other an unreasonable rate for the gas furnished and thus to make such unfair charge in part the basis of the retail rate. The state authority whose powers are invoked to fix a reasonable rate is certainly entitled to be informed whether advantage has been taken of the situation to put an unreasonable burden upon the distributing company, and the mere fact that the charge is made for an interstate service does not constrain the Commission to desist from all inquiry as to its fairness. Any other rule would make possible the gravest injustice, and would tie the hands of the state authority in such fashion that it could not effectively regulate the intrastate service which unquestionably lies within its jurisdiction.

"The principles applicable in a rate investigation, where similar corporate relationship existed, were recently announced in Smith v. Illinois Bell Teleph. Co. (1930) 282 U. S. 133, 152, 75 L. ed. 255, P.U.R.1931A, 1, 51 S. Ct. 65, and no purpose would be served by repetition or elaboration of what was there said."

Since the Commission had the right to make a detailed study of the operating expenses and fixed capital charges of objector, and since Blair is in effect a part of Pennsylvania Edison's organization, it is the opinion of the Commission that the costs incurred by Commission employees in making such study are properly charged to objector, and therefore the third objection is overruled.

[5, 6] The fourth objection, as stated by counsel for objector, is as follows:

"Now, when we come to the Pennsylvania Edison, we have an additional question. The entire charge is objected to as far as the Pennsylvania Edison is concerned, because there was no proceeding or complaint that would justify the imposition of that charge under subsection B of the act.

"The facts in connection with it are these:

"On April 26, 1937, by an executive order, the Commission directed its own bureau of accounts to make a study of the Pennsylvania Edison. That order was not a proceeding or a complaint, because it was never served on the company. No attempt was made to serve it, and it was never intended to be served. It was an interoffice memorandum from our point of view, and we say that that clearly cannot come within the statute, subsection B, so the entire amount of that bill is objected to for that reason."

. . . . . .

"We go beyond that. We say the act specifically provides that when any proceeding is started for service on the company, and as long as your Utility Act provides that every proceeding or complaint must be served on the company, it necessarily follows that an in-

teroffice memorandum, which is not served, and never intended to be served, cannot be a proceeding."

. . . . . .

"Yes, and our contention there is that that is neither a complaint nor a proceeding; that it was never intended to be anything except a request of the Commission to its own officers to give them a report on something, and therefore, not within the meaning of § 1201 (b), and that it could not possibly be under that, because the act specifically provides a complaint or proceeding.

"Our objection, therefore, on that ground goes to the entire amount of the bill."

The investigation billed against objector consisted of an accounting examination for rate purposes undertaken by the bureau of accounts pursuant to the executive order of April 26, 1937. As heretofore stated, the Commission did not, either at that time, or at any subsequent date, institute any formal complaint against the electric rates of objector.

An interpretation of § 1201(b), quoted heretofore, as it is now punctuated would prevent the Commission from specifically assessing a utility for the expenses attributable to an investigation, where that investigation was instituted by the Commission upon its own motion, unless a complaint had been filed. That certainly was not the intention of the legislature. A perusal of the Public Utility Law demonstrates that there are four distinct ways in which actions may be commenced before the Commission, viz.:

1. By the Commission upon its own motion.

2. By the filing of a complaint by any interested party.

3. By the filing of an application.

4. By the filing of a securities certificate.

Unless an action could be commenced by the Commission upon its own motion, its functions would be curtailed to a great extent since a large number of the actions before it are commenced in that manner. It is highly improbable that the legislature empowered the Commission to commence actions upon its own motion in other sections of the act, but limited the assessment of specific expenses in § 1201 (b) to those cases where the action was commenced by the Commission upon its own motion only when a complaint had been made or by any one of the other three ways mentioned above.

Section 1201 (b) is not properly punctuated. In order to ascertain the intention of the legislature, it should be read as though there was a comma after the words "proceeding" and "motion." The punctuation contained in the Acts of Assembly is not official and cannot control the interpretation.

In Commonwealth v. Reimel (1917) 68 Pa. Super. Ct. 240, 242, it was said:

"As was said in Commonwealth v. Shopp (1863) 1 Woodw. Dec. (Pa.) 123, 130: 'The marks of punctuation are added subsequently by a clerk or a compositor, and this duty is performed very frequently in an exceedingly capricious and novel way.' Punctutation is not conclusive in the construction of a statute: Re Gyger's Estate (1870) 65 Pa. 311; Re Montgomery's Estate (1916) 63 Pa. Super. Ct. 318; and will not be considered when the sense is clear: Common-

wealth v. Taylor (1894) 159 Pa. 451, 28 Atl. 348."

In Opinion of Attorney General: 20 D. and C. 94, it was said:

"Punctuation contained in the printed volumes of Pennsylvania Acts of Assembly is not official and cannot control the interpretation of an act."

Sections 51 and 53 of the "Statutory Construction Act" (46 PS §§ 551, 553) of May 28, 1937 (No. 282), read as follows:

"Section 51. Construction of Laws; Legislative Intent Controls.—The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions."

. . . . . .

"Section 53. Grammar and Punctuation of Laws.—Grammatical errors shall not vitiate a law. A transposition of words and clauses may be resorted to where a sentence is without meaning as it stands.

"In no case shall the punctuation of a law control or affect the intention of the legislature in the enactment thereof.

"Words and phrases which may be necessary to the proper interpretation of a law and which do not conflict with its obvious purpose and intent, nor in any way affect its scope and operation, may be added in the construction thereof."

Was a study made in pursuance of the Commission's executive order such a "proceeding" as was intended by the legislature so that the cost incurred therein could be assessed against objector?

"Proceeding" is defined in Webster's New International Dictionary as follows: "The course of procedure in an action at law. Any step or act taken in conducting litigation."

In 1 C. J. 941, it is stated: "In its ordinary acceptation, the word (proceeding) when unqualified except by the subject to which it is applied, includes the whole of the subject," and again on the same page:

"The term proceeding is generally applicable to any step taken by a party in the progress of an action."

There can be no doubt that the study was an action and a vital step in the investigation of objector, and it comes within the purview of the Commission's jurisdiction as contained in § 1008. That section reads as follows (66 PS § 1398):

"Investigations.—The Commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of any public utility or any other person or corporation subject to this act. In conducting such investigations the Commission may proceed, either with or without a hearing, as it may deem best, but it shall make no order without affording the parties affected thereby a hearing."

The procedure as outlined in that section has been followed in the instant case.

One of the Commission's functions is to police the rates of public utilities, and in performing such functions, preliminary investigations are essential in determining whether or not the rates shall be placed upon trial, that is, whether or not formal complaints against them shall be instituted. Therefore, it is the practice of the

Commission to make preliminary studies of utility records in which only the bare essentials are examined—they are not nearly so detailed as are audits made to substantiate formal complaints. If one of these studies gives the Commission reason to believe that the rates of the utility are probably excessive, a formal complaint is made, a thorough accounting and engineering investigation is had, and the case terminates with a Commission order.

The other alternative in procedure is for the Commission to institute a formal complaint against the utility before making any investigation. If this practice were pursued, however, the fact that a formal case had been instituted would necessitate a thorough examination of property and records in the first instance, and while the cost of such examination would be chargeable under Pennsylvania Edison's contention, it undoubtedly would work a hardship upon companies whose rates were ultimately found fair and reasonable, by reason of the heavier costs with which they would be charged by the Commission.

We have already cited that portion of § 1201 (a) which says that assessments shall be made upon a reasonable basis, and in equitable amounts. We have also referred to § 1201 (f) in which the legislature signified its intent that the several groups of utilities should contribute to the commonwealth the reasonable cost of regulating the respective groups. It is also evident that in § 1201 (b) the legislature was prescribing what it deemed to be a reasonable basis and an equitable amount of assessment under certain circumstances. It is the recital of these circumstances which Pennsylvania Edison is now construing in a sense narrow enough to destroy the equity which the legislature obviously intended should be the spirit of § 1201, for if Pennsylvania Edison's contention is correct, this bill of $3,905.21 for working on matters pertaining to that company exclusively will be distributed against all electric utilities in the commonwealth. We cannot conceive a reason why Philadelphia Electric Company, for example, should bear any part of this expense, although the construction placed on the statute by the objector would cause the largest single share thereof to be borne by that company.

We incline to the belief that § 1201 (b) must be administered equitably, and that such can be the case only if the words "the Commission . . . on its own motion . . ." refer to any act which the Commission takes upon its own initiative, as distinguished from acts taken upon the complaint of a patron or upon petition to it by a utility.

For the reasons above stated, the fourth objection is overruled.

As we have already said, it is apparent that the legislative intent was to apportion Commission expenses among the utilities in the most equitable manner, and the Commission, pursuant to that intent, has sought diligently to avoid arbitrary decisions in making such apportionment. Among the first acts of the Commission after the Public Utility Law became effective was to invite representatives from various utility associations to participate in a discussion of our problems in administering this assessment section. Commission employees were made available for informal conferences

with the committee appointed by these representatives, and on July 30, 1937, that committee filed a very helpful report, reflecting the attitude of the committee members toward Commission proposals.

On the points at issue in the present cases, the committee and the Commission were in accord on the 7-hour-day rule; there was no discussion of the matter of investigating subsidiaries; the nature of proceedings in which costs are chargeable was not discussed, but the committee did suggest that the Commission, before entering upon an investigation, give the utility an opportunity to satisfy the reasons prompting the investigation (obviously impossible if the investigation is of a policing nature as heretofore described), and to confer with the Commission as to the plan or method of investigation so that duplication of effort could be avoided (which is undesirable for it places the Commission in the position of relying upon data prepared by the company's employees); finally, while there was no discussion as to the meaning of "traveling expenses" in § 1201 (b), the committee understood that subsistence was to be charged, for it asked that special assessment bills be "itemized as to lodging, meals, traveling, and other usual subdivisions."

It is not suggested that this report bound the Commission to act accordingly. Some of the suggestions of the committee were rejected, because of impossibility of performance, or because they tended to place burdens where the Commission, with its wider view of the utility field as a whole, believed they could not be borne, or for other reasons which reflect no discredit upon the committee. A majority of the suggestions as to special assessments (the only type made thus far), however, were adopted by the Commission. Nor did the report bind any utility to acquiesce in any recommendation made therein which was subsequently adopted by the Commission. The Commission has no desire to act arbitrarily in the administration of the assessment provisions of the act, and its rules were adopted only after it had provided an opportunity whereby a cross-section of the utility industries could voice its views. These views were made the action of the Commission wherever it deemed them compatible with equity and practicability, and, in the instant case, the charges were made under some of those rules as well as some which the Commission believed met these two requirements more closely than did the committee's suggestions; therefore,

Now, to wit, July 25, 1938, it is *ordered:* That Pennsylvania Edison Company pay the sum of $3,905.21 to the Commission, in accordance with bill dated January 24, 1938, and § 1201 of the Public Utility Law.

Re The Middle West Corporation

[File Nos. 46-77, 46-97.]

Intercorporate relations, § 18.1 — Stock acquisition — Authorization — Condition as to publicity.

Authorization for a registered holding company to acquire in the open market additional shares of stock of a subsidiary was conditioned upon the subsidiary company, at the expense of the holding company, furnishing information to its stockholders concerning acquisition of such stock, in view of the fact that the holding company was pitting its investment judgment against those who sold stock to it.

[October 12, 1938.]

APPLICATION *by registered holding company for approval of its acquisition of a specified number of shares of stock of one of its subsidiaries; granted subject to conditions.*

By the COMMISSION: The Middle West Corporation, a registered holding company, has filed an application, pursuant to § 10 (a) (1) and § 9 (c) (3) of the Public Utility Holding Company Act of 1935, for what is in effect an approval of its acquisition of not to exceed 20,000 shares of the $6 preferred stock of Central Illinois Public Service Company, one of its subsidiaries, such stock to be purchased through brokers in the open market at the prices prevailing at the time when the respective purchases are made. The application is filed in the alternative and will be treated as as having been filed pursuant to § 9 (c) (3) which provides that subsection (a) of § 9 shall not apply to the acquisition by a registered holding company of "such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers." (15 USCA § 79i [c (3)].)

Public hearings on this application were held after appropriate notice. The Commission has considered the record in this matter and makes the following findings:

Acquisitions by The Middle West Corporation of the $6 preferred stock of Central Illinois Public Service Company have three times before been considered by this Commission (Re Middle West Corporation, File No. 46-44, Ibid. File No. 46-40, Ibid. File No. 46-77. See Holding Company Act Releases 707, 735, and 902, respectively.) Reference is made to these previous findings of the Commission in so far as they are applicable.

Central Illinois Public Service Company, an Illinois Corporation, is a gas and electric utility company serving communities in central and southwestern Illinois. It was one of the first subsidiaries of which control was obtained by the predecessor of The Middle West Corporation, Middle West Utilities Company. As of March 31, 1938, the company had outstanding 260,343 shares of common stock, 278,789 of $6 preferred stock without par value, and 5,930 shares of 6 per cent cumulative preferred stock with a par value of $100 per share. Prior to the Commission's order in File No. 46–44, on June 15, 1937, applicant owned 74.26 per cent of the common stock of Central Illinois Public Service Company but only .534 per cent of its preferred stock. As both preferred and common stock of Central Illinois Public Service Company have the unrestricted right to vote, applicant then owned only 35.75 per cent of the voting securities of its subsidiary. The Commission's order of June 15, 1937, approved the acquisition (from Middle West Utilities Company of Canada, Ltd., a subsidiary) of 3,000 shares, thus bringing applicant's percentage of voting control up to 36.30 per cent.

By the Commission's order of June 30, 1937, in File No. 46–40, The Middle West Corporation was authorized to acquire not to exceed an additional 10,000 shares of the preferred stock of Central Illinois Public Service Company on the open market. All of such shares were acquired and applicant's voting control was thus increased from 36.30 per cent to 38.13 per cent.

By the Commission's order of November 26, 1937, in File No. 46–77 the acquisition of an additional 10,000 shares on the open market was authorized.

In the instant application (File No. 46–97) the applicant has requested approval of the acquisition of an additional 20,000 shares of stock. If the Commission should grant this order and the applicant should acquire all of the said 20,000 shares, the applicants will own 15.64 per cent of the preferred stock, 74.26 per cent of the common stock, and 43.64 per cent of all of the voting securities outstanding.

It appears that not all of the shares, the acquisition of which was authorized by this last order, have been purchased. In a supplemental application filed in File No. 46–77 The Middle West Corporation represented that as at the close of business on June 16, 1938, it had acquired 7,200 shares out of the 10,000 shares authorized to be acquired. The supplemental application requested an extension of the order, which would have automatically terminated on June 30, 1938. Pursuant to the supplemental application the Commission, by its order of July 2, 1938 (Holding Company Act Release No. 1153), extended that order until such time as the Commission should take action upon the instant application.

By way of summary it appears that prior to June 15, 1937, the applicant owned only 1,520 shares of the preferred stock of Central Illinois Public Service Company, whereas if the total authorized buying power including that requested by the present application is exercised by the company it will

own 44,520 shares of such preferred stock or 15.64 per cent thereof.

At the hearing, the president of the company gave two basic reasons for the applicant's desire to increase its position in the preferred stock of Central Illinois Public Service Company.

In the first place, according to his testimony, this preferred stock may be considered as a sound investment for surplus funds of the applicant. The preferred stock has a liquidating value of $100. The preferred stock, which has a dividend rate of $6 per share has been for some years on a reduced dividend basis resulting in an arrearage of preferred dividends of $20.50 per share to and including September 15, 1938. Four dollars per share is currently being paid. The average price at which The Middle West Corporation has been able to buy preferred stock is at a rate of $57.25 per share resulting in an average yield of approximately 7 per cent at the current dividend rate.

Secondly, the president's testimony would seem to indicate that after giving effect to the arrearage of preferred dividends and to the elimination of certain intangible items the common stock of Central Illinois Public Service Company might have little or no equity. The applicant desires to retain Central Illinois Public Service Company as one of its subsidiaries. A recapitalization of that company, which appears to be inevitable, might result in applicant's losing control of the company unless it can obtain substantial holdings in the preferred stock.

This Commission in its findings in File No. 46–44 and File No. 46–97 exempted the acquisition of an aggregate of 20,000 shares from the provisions of § 9(a) of the act. The questions presented by the present application are not fundamentally different from those presented by the previous applications. The Commission, however, on the previous applications attached certain conditions calculated to protect the interest of investors. These conditions were substantially as follows and will likewise be attached to the present order:

(1) On or before the fifth day of each week while the order of the Commission in this case remains in effect, the applicant shall file with the Commission a report with respect to its purchases of preferred stock of Central Illinois during the preceding week. Each such report shall set out the date of each purchase, the number of shares purchased in each transaction, the prices paid therefor, the exchange on which purchased, and the name and address of the broker in each transaction;

(2) The order of the Commission shall be summarily revocable if at any time the Commission shall deem that the circumstances are such as to make further purchases no longer compatible with the public interest or the interest of investors and consumers. In any event, such order shall expire at the close of business on March 31, 1939;[1]

(3) The applicant shall not, directly or indirectly, sell any shares of the preferred stock of Central Illinois Public Service Company during the time while the order in this case is

[1] In the order in File No. 46–77, June 30, 1938, the date being later extended.

effective or for a period of six months thereafter;

(4) All such purchases shall be made in compliance with the terms of the application filed with the Commission in this matter.

One additional condition would seem to be essential for the protection of investors, in the light of the record made in this case. It appears that the majority of purchases have been made in small blocks, thus indicating that a large percentage of purchases have been from small investors. It also appears that applicant is placing its bids with great care in such a way as to obtain prices favorable to applicant. In our findings in File No. 46–40, we said: "In buying at what might be regarded as depressed prices, Middle West is pitting its investment judgment against those who sell to it." In order to avoid any possibility that applicant, the buyer, is using its superior knowledge of the affairs of Central Illinois Public Service Company to buy stock from uninformed investors, the Commission's order will attach a fifth condition as follows:

(5) Central Illinois Public Service Company shall, at the expense of The Middle West Corporation, and in the next regular communication which Central Illinois Public Service Company makes to its preferred stockholders (which will normally be on the date the December 15, 1938, preferred dividend checks are mailed), enclose a letter stating that prior to June 15, 1937, The Middle West Corporation owned 1,520 shares of Central Illinois Public Service Company preferred stock; that on or about June 15, 1937, The Middle West Corporation was authorized by the Securities and Exchange Commission to purchase an additional 3,000 shares of such preferred stock from an affiliated company; that on June 30, 1937, The Middle West Corporation obtained authority from said Commission to purchase an additional 10,000 shares of such preferred stock on the open market; that on November 26, 1937, it obtained authority from said Commission to purchase an additional 10,000 shares of such preferred stock; that on October 12, 1938, The Middle West Corporation obtained an order from said Commission authorizing the purchase of an additional 20,000 shares of such preferred stock on the open market, but that such order was expressly conditioned upon the foregoing information being communicated to all preferred stockholders of Central Illinois Public Service Company.

Subject to the foregoing conditions the Commission finds that the acquisition in question is appropriate in the ordinary course of business of applicant and is not detrimental to the public interest and the interest of investors or consumers.

Subject to the same conditions (except as to the date of expiration) the Commission's order in File No. 46–77 will be further extended until December 31, 1938.

In File No. 46–97, an appropriate order will issue pursuant to § 9(c)(3), exempting the acquisition from the provisions of § 9 (a).

MARYLAND PUBLIC SERVICE COMMISSION

The Baltimore & Annapolis Railroad Company

v.

Jerome M. and Evelyn E. Lichtenberg et al.

[Case Nos. 4207, 4208, Order No. 33484.]

Certificates of convenience and necessity, § 50 — When permit is required — Transportation of employees — Contract with government.

Motor vehicle operators engaged in transporting laborers on regular schedule between certain points within the state under contract with the United States government must secure a permit from the Commission in order to legalize such transportation.

[October 10, 1938.]

COMPLAINT *against transportation of laborers for Federal government without authorization by the Commission; complaint sustained and defendants ordered to cease operations.*

APPEARANCES: Edgar Allan Poe, for the complainant; Thomas J. Tingley, Theodore R. McKeldin, and M. William Adelson, for the respondents; Joseph A. Wilmer, People's Counsel.

By the COMMISSION: The Baltimore & Annapolis Railroad Company, an interurban electric railroad which operates a frequent service between Baltimore and Annapolis and a number of intermediate points, complained to this Commission that defendants were transporting daily from Baltimore to Annapolis and return, by motor vehicles operated on regular schedule, for hire, numbers of laborers who live in Baltimore and are employed upon work being done at the United States Naval Academy, and that the rights of complainant are being infringed upon and violated and are being subjected to unrestricted and unregulated competition.

A public hearing was had on September 22nd, at which it was shown that defendants had a fleet of trucks and busses employed, under contract with the United States government, in transporting laborers on regular schedule between a certain point in Baltimore and various points within the Naval Academy reservation at Annapolis, and that only the ordinary hiring license had been obtained for the vehicles so employed. It was testified that the trucks had been equipped with seats to accommodate forty passengers, each, and that defendants were paid for the service at the rate of 30 cents per passenger.

The jurisdiction of the Public Service Commission over motor vehicle operations, except of taxicabs, is derived from the Motor Vehicle Laws of Maryland embraced in Art. 56 of the Annotated Code of Public General Laws of Maryland.

The law provides that it shall be the duty of each owner of a motor vehicle to be used in the public intrastate transportation of passengers for hire, operating on regular schedule or between fixed termini, to secure a permit for such operation from the Public Service Commission, except when the vehicle is used for the transportation of pupils to and from school. The law provides further that special registration of the vehicle shall be made with the Commissioner of Motor Vehicles who shall furnish the owner a special marker to be displayed on the vehicle, and that the owner shall pay a special tax at the rate of one-eighteenth cent per passenger seat, multiplied by the number of miles to be traveled during the life of the permit. The Public Service Commission is authorized to make rules and regulations to govern operations for which permits are granted and to impose penalties for violation thereof, including revocation of permit. It is further provided that, in passing upon an application for such permit, the Commission shall investigate the expediency of granting it and the rates to be charged; and, if it is deemed best for public welfare and convenience that a permit should be granted, it shall be subject to such reasonable conditions and terms as the Commission deems advisable.

In the light of the description of defendants' operation which was given at the hearing, it is clear to the Commission that a permit is required for the transportation of said passengers, but it is clear, also, from the photographs filed as Complainant's Exhibit No. 1, that the trucks being used by defendants do not conform to the Commission's requirements for passenger vehicles, as set out in its rules and regulations which are designed to assure a reasonable degree of safety, comfort, and convenience to the passengers, and that a permit could not be granted for the operation as now conducted. However, § 264 of Art. 56 makes it the duty of the Commissioner of Motor Vehicles to enforce the provisions of the act and this Commission does not undertake to compel operators to apply for permits.

Applications have been received from time to time for permits for passenger transportation by motor vehicle between Baltimore and Annapolis but the Commission has given consideration to the relatively frequent, convenient, and necessary rail service being furnished by The Baltimore & Annapolis Railroad Company, and the struggle which that company is having to earn expenses and keep operating, and has refused to grant a permit for a competing service. Section 255-A of Art. 56 provides that any carrier may bring complaint to the Public Service Commission of unauthorized competing operations and requires that if the Commission shall find the complaint to be justified it shall notify the offender to cease such operation.

It is argued by counsel for defendants that their clients are operating as agents of the United States government, and a number of court rulings are cited to support the claim that such

agents are not required to have special state licenses and pay special taxes such as the Maryland law requires of those who operate motor vehicles for hire, but it seems clear to the Commission that defendants are operating as independent contractors, responsible for the safe conduct of their passengers. The trucks are registered in the names of the defendants and are not the property of the government, and defendants have protected themselves by insurance in the form generally used for operators of passenger motor vehicles for hire.

The Commission finds that complainant's charges are true and will, therefore, issue an order to defendants to cease the operations of which complaint is made.

WEST VIRGINIA PUBLIC SERVICE COMMISSION

Benwood-McMechen Water Company

v.

City of Wheeling

[Case No. 2592.]

Service, § 359 — Obligation of municipal plant — Water supply to outside company.

1. The Commission is not warranted in saying that a municipal water utility has no obligation to continue water service to an outside water utility company when the municipality has accepted the company's application and has supplied it with the quantity of water necessary for its needs over a period of years, p. 407.

Discrimination, § 127 — Municipal plant — Rates to outside water company.

2. Testimony offered by a municipal water utility in support of a contention that its inside rates were discriminatory was held insufficient to warrant a finding that by applying its inside rates to water supplied to an outside water company it was guilty of unlawful discrimination, as it had no other customer in the same class or any customer who was being supplied with water under the same or similar conditions and circumstances, it appearing further that the water company was a purveyor and distributor of water and not a customer and that, unlike customers and taxpayers in the city, it paid for all of the water furnished to and used by it for fire protection, p. 407.

Rates, § 429 — Municipal water utility — Service to outside water company.

3. Rates of a municipal water utility in effect for service to customers inside its corporate limits should be applied to service rendered to an outside water utility company receiving water from a line connection within the corporate limits, when the tariff of the municipal utility provides that such rates are applicable "to customers whose lines are connected with the city's

lines within the corporate limits," while its tariffs applicable outside of city limits are applicable "to customers whose lines are connected with the city's lines outside the corporate limits," p. 407.

[September 28, 1938.]

COMPLAINT *by water utility company against billing by municipal water utility for water purchased for resale; complaint sustained.*

APPEARANCES: Frank C. Dunbar, Columbus, Ohio, for complainant; J. T. McCamic, Wheeling, for defendant.

By the COMMISSION: The complainant, Benwood-McMechen Water Company, is a corporation duly organized and existing under and by virtue of the laws of the state of West Virginia and is in the business of furnishing water service within and near the municipalties of Benwood and McMechen. It alleges in effect, by complaint filed March 10, 1938, that the defendant, city of Wheeling, has billed it for water service at rates that are 25 per cent in excess of those charged other customers for water delivered within the defendant's corporate limits, contrary to the orders of this Commission; that in spite of the fact that it has paid promptly for all water service rendered, in accordance with the rates applicable thereto, the defendant has refused to allow it the discount of 10 per cent on bills so paid as provided for in the defendant's schedule of rates applicable to the service it is receiving; and that the excess charges of 25 per cent now amount to $38,841.01, which the defendant is carrying upon its books and thereby injuring the complainant's credit and financial standing; and prays in effect that an order be entered requiring the defendant to cease and desist from its practice of billing the complainant at rates applicable to customers whose lines are attached to the defendant's lines without its corporate limits and instead to bill it at rates applicable within the defendant's corporate limits.

The defendant contends that, by reason of the fact that the complainant has not contributed to the cost of constructing the water plant in the city of Wheeling, it is under no obligation to supply the complainant with water service, either within or without the corporate limits of the city; that the rates which the complainant claims should be applied to the water furnished to it are not compensatory; that, by applying the rates to water furnished to an industrial plant located in the city of Wheeling and to the complainant, there is patent discrimination, which is unlawful; that the complainant should be required to secure its water supply either from its own wells or from the Ohio river; requests that its answer and cross-petition be treated as an application for authority to discontinue service to the complainant; and prays that it may be acquitted of the charges set forth by the complainant, and that the Commission will order the complainant to forthwith pay the accumulated delinquent amounts which are due from it.

The defendant does not deny that the complainant's lines are connected to its lines within its corporate limits; that it is a public utility and subject to the provisions of Chap. 24 of the Code of West Virginia; that it is applying rates applicable to water supplied to customers whose lines are connected to its lines outside of its corporate limits to the quantity of water supplied to the complainant and billing it accordingly; and that when payments were made to it by the complainant in accordance with its inside rates, it refused to allow the complainant the discount applicable thereto, as shown by its effective tariff.

The record in Case No. 1762, City of McMechen, Complainant, and City of Benwood, Intervener v. Benwood-McMechen Water Company, Defendant, the record in Case No. 1904, City of Wheeling, a municipal corporation, Application for authority to change rates for water service, and the record in Case No. 2275, City of Wheeling, a municipal corporation, Application for authority to change rates for water, having been made a part of the record in the instant case, and the facts as shown therein leading up to the controversy between the parties as to the proper rate to be applied by the defendant to water furnished by it to the complainant having been fully discussed in the opinion of our supreme court of appeals in Wheeling v. Benwood-McMechen Water Co. (1934) 115 W. Va. 353, 176 S. E. 234, we deem it unnecessary to recite them here.

[1-3] Pursuant to the Commission's order entered on December 21, 1933, in Case No. 2275, *supra*, the defendant issued its tariff designated P. S. C. W. Va. No. 4 on December 31, 1933, effective January 1, 1934. This tariff contains all of the defendant's effective rate schedules, as no change has been made in its rates since January 1, 1934. The applicability clause of Schedule 1 reads, "Applicable to customers whose lines are connected with the city's lines within the corporate limits." The applicability clause of Schedule 2 reads, "Applicable to customers whose lines are connected with the city's lines outside the corporate limits." There is shown in each of these schedules the service charge, output charge, prompt payment discount, minimum charge, and booster charge. There is a notation on each schedule which reads, "Issued by authority of an order of Public Service Commission of West Virginia in Case No. 2275, dated December 21, 1933."

No evidence was adduced by the defendant in this proceeding to show there had been an increase in its customers or that the conditions under which it was supplying water to the complainant had in any way changed since the entry of the Commissioner's order in Case No. 2275, *supra*. In support of its contention that it is discriminating against its outside customers by applying the rate applicable inside of its corporate limits to water furnished to the complainant, it offered testimony to show that it had between eight and nine hundred customers whose lines were connected with its lines outside of its corporate limits and who were paying the rate applicable to outside service, a fact which was well established and considered by the Commission in Case No. 2275, *supra*, in which the Com-

mission, by reason of the fact that a controversy was then pending in the courts as to the rate that was applicable to the water being supplied by the defendant to the complainant, purposely worded its order so as to clearly require the defendant to apply its rates applicable to customers whose lines were connected with the defendant's lines within its corporate limits to the water supplied by it to the complainant, so as to avoid any further controversy with respect to this matter.

The defendant's contention that its inside rates, if applied to the water furnished to the complainant, are not compensatory is not supported by any evidence, but, on the contrary, its principal witness, E. E. Bankson, testified in Case No. 1904, *supra,* and again in Case No. 2275, *supra,* that it was profitable for the defendant to supply water to the complainant at its inside rates, at least until there was an increase in the use of water by its other customers, and that the supplying of water to the complainant was desirable and worth while. The defendant having accepted the complainant's application and having supplied it with the quantity of water necessary for its needs in supplying water to its customers over a period of eleven years, we do not think that we are warranted at this time in saying that it has no obligation to continue the service or that it may be discontinued.

We do not think that the brief testimony offered by the defendant in support of its contention that its inside rates are discriminatory warrants the Commission in finding that, by applying its inside rates to water supplied to the complainant, it is guilty of unlawful discrimination, as it has no other customer in the same class nor any customer who is being supplied with water under the same or similar conditions and circumstances. The complainant is a purveyor and distributor of water, not a consumer. Unlike customers and taxpayers in the city of Wheeling, it pays for all of the water furnished to and used by it for fire protection. In view of the fact that Case No. 2569, Carl G. Bachmann, Complainant v. The City of Wheeling, a municipal corporation, Defendant, is pending before us, but not submitted, we deem it inadvisable to discuss this subject further.

After carefully considering the entire record in this proceeding, including the briefs filed and the examination of the decisions of the courts with respect to the matters involved herein, we are of the opinion and find that the defendant's rates that have been and are now in effect for service rendered to customers whose lines are connected with its lines within its corporate limits should have been and in the future should be applied to the service rendered to the complainant; that the supplying of water to the complainant by the defendant at its inside rates is profitable to the defendant; that the defendant has failed to show that, by furnishing water to the complainant at its inside rates, it is discriminating against its other customers; and that the defendant's request for authority to discontinue service to the complainant should be denied.

An order will be entered accordingly.

Re Mooresville Telephone Company

[Docket No. 1403.]

Security issues, § 103 — Stock dividends — Accumulated surplus — Reinvested earnings.

A small telephone company, needing for expansion new capital possibly obtainable from satisfied stockholders but not practicably obtainable by a loan, may properly issue to its stockholders from surplus, according to their respective stock interest, an amount of stock representing money which has been frugally saved and reinvested in the plant when it could have been paid to the stockholders, as the stockholders are entitled to have something to show for their reinvestment.

[September 27, 1938.]

APPLICATION *by telephone company for authority to issue stock to its present stockholders; application granted in modified form.*

By the COMMISSION: This cause came before the Commission upon the application of the Mooresville Telephone Company for authority to issue $12,000 in stock to its present stockholders.

The applicant was represented by Hon. Zeb. V. Turlington, attorney, of Mooresville, North Carolina, and at the hearing there appeard Dr. Voils, manager of the said company.

From the statements of Dr. Voils and from the records offered, the following facts are found:

That on December 31, 1937, the outstanding common stock amounted to $12,000, and the same amount is outstanding today; that the applicant company was organized in 1900, when Mooresville had a population of approximately 1,500 people, whereas today the population is over 6,000; that there has been a steady expansion in the telephone properties and profits have been used in the enlargement of the plant until the surplus exceeds the capital stock by nearly $5,000; that this surplus has been accumulated by economical management and small salaries paid the officials of the company, instead of having been paid to the stockholders in large dividends.

It is further found as a fact that the present exchange and distribution system is inadequate for the present and future needs of the town of Mooresville and that additional capital is needed for this expansion.

Upon the foregoing facts, the applicant contends that, under present conditions, it is difficult, if possible to persuade the present stockholders to provide sufficient capital for what is needed, and due to the smallness of the exchange and the hazards of

storms which might destroy telephone properties, it is not practicable to negotiate a loan for the money needed. It was further contended that the present stockholders feel that it is unfair to them that the profits which have been made by close economical management should be reinvested in the company and that they have nothing to show for the savings in the way of stock, and contend that it is only fair that they be issued stock from surplus in the amount of $12,000.

It is further contended by the applicant that if this stock dividend is allowed that it is believed that the present stockholders can be persuaded to put up in cash the necessary amounts for the needed improvements by buying additional stock.

Upon consideration of the testimony, record, exhibits, and representations made to the Commission, and upon an examination of the salaries paid over a period of the last eight years, some of the salaries truly being nominal salaries and none large, I am of the opinion that there is justice in the contention of the applicant and its stockholders that there should be some reward for thrift and economy, even in a public utility and that where money has been frugally saved and reinvested in the plant, when it could have been paid to the stockholders, that the stockholders are entitled to have something to show for their reinvestment. Upon an investigation of the financial condition of the company, however, I am of the opinion that the amount applied for is more than is deserved and that the stockholders should be satisfied with one-half that amount, or $6,000.

Wherefore it is *ordered,* that the Mooresville Telephone Company be and the same is hereby directed to issue to its stockholders from surplus, according to their respective stock interest, the aggregate amount of $6,000, and at the proper time to apply for an increase in capital stock and to sell such additional capital stock authorized for cash at par value.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

J. C. Hulings

v.

Crystal Springs Park Water Company

[Complaint Docket No. 11443.]

Payment, § 28.1 — Methods of enforcement — Confession of judgment.

1. A requirement that an applicant for water service sign and deliver a form of written application containing a provision for confession of judgment against the customer if he shall fail to pay is intolerable and indefensible, in view of the right of the company to require a deposit and to discontinue service for nonpayment, p. 412.

Payment, § 59 — Deposit to insure.

2. A water utility company has the right to require deposits to insure payment, within the limits provided by law and regulations, p. 413.

Payment, § 63 — Deposits — Refund — Deduction for bill.

3. A water utility company which has exacted a deposit from a water customer should return the deposit upon discontinuing service, or, if a bill for water service is unpaid, it should return the balance accruing to the customer, p. 414.

[September 26, 1938.]

COMPLAINT *against discontinuance of water service for failure of customer to sign application incorporating a confession of judgment provision and against requirement of deposits; complaint sustained subject to limitations.*

By the COMMISSION: J. C. Hulings, complainant, a resident of James City, avers that in connection with a request by him for the initiation of water service from respondent, Crystal Springs Park Water Company, he delivered $10 to respondent as a deposit to insure payment for future water service to him, and such water service was inaugurated on July 13, 1937; that subsequently respondent water company requested him to sign and deliver a specified form of written application for service, subject to discontinuance of water service upon noncompliance; that he refused to sign and deliver the said application upon advice of counsel, whereupon water service to him was discontinued by respondent on July 21, 1937; that following said discontinuance the deposit was not returned; that the deposit requirement is contrary to the law and rulings of the Commission; and that the requirement that he execute and deliver to said company the particular form of application is illegal, unjust, and unreasonable, because the same provides, upon nonpayment of a bill for service when due, for a general confession of judgment against complainant, and for the issuance of an execution, under which his goods and property might be sold to satisfy the judgment, without any notice whatsoever to him. The complainant prays that the Commission order respondent water company to return the $10 deposit and further to require respondent company to furnish water service to complainant without signing the written application as specified by respondent.

In answer, respondent avers that complainant orally applied to an agent of respondent for water service; that water service was inaugurated and later discontinued after complainant refused to comply with the rules and regulations of the company as contained in its effective Tariff Pa. P. U. C. No. 3, which provides that formal written application for water service, on a form approved by respondent, shall be submitted to respondent for approval; that upon discontinuance of service to complainant, respondent unsuccessfully attempted to return complainant's deposit on more than one

occasion; that the requirements of the company, relative to consumers' deposits, are in accordance with the Commission's Temporary Regulation No. 2, amending Art. III, § 305 of the Public Utility Law; and that the confession of judgment provision in respondent's form of application for water service is necessary and imperative in order to minimize losses due to nonpayment of water service.

A hearing in this proceeding was held on September 21, 1937, and the case was submitted on the record, briefs and arguments being waived.

Crystal Springs Park Water Company, respondent, is a Pennsylvania corporation furnishing public water supply service in the village of James City, Highland township, Elk county, and vicinity; and in a portion of Wetmore township, McKean county. Complainant, an individual, moved to James City about January 7, 1937, and on March 15, 1937, secured a deed to the property in which he resided.

On July 12, 1937, complainant's wife appeared at the branch office of respondent water company in James City and orally requested water service. At that time the total cash deposit requested by the company could not be paid, but an arrangement was made whereby there was an immediate partial payment of $5, the balance of $5 being due and payable two weeks thereafter. The applicant was furnished with a form of written application for service, and was instructed to have the same signed and delivered to the company.

Without awaiting receipt of the executed written application, water service was rendered the following day, July 13, 1937, although this inauguration of service was contrary to respondent's own rules and regulations, contained in its Tariff Pa. P. U. C. No. 3, in which the following appears:

"Application for Water Service of Service Connection.

"1. Upon written application for water service or service connection or both as the case may require on form furnished by the water company and upon approval of such application by the company service connection or initiation of water service or both as the case may require will be provided. All applications must be made at the office of the company."

On July 15, 1937, the balance of the deposit was paid, and then, or soon thereafter, respondent or its agent again requested the signed written application for service. After complainant refused or failed to sign and deliver the said application, service was discontinued by respondent July 21, 1937.

[1] With respect to respondent's specified form of written application for service, which complainant refused to sign and deliver on advice of counsel, and which was adopted by the company in 1936, and since used, respondent states that recent economic circumstances in the service area necessitated the use of the hereinbefore described form of written application incorporating a confession of judgment provision. Respondent states that during the past few years it extended credit generally to consumers in anticipation of more favorable economic conditions. However, many of these unpaid balances were lost to

respondent when the community's principal industry was abandoned, resulting in an exodus of workers and consumers from the service area. In a few instances respondent sued for the collection of moneys owed to it, but due to the lack of real property and exemption of property under the law in these matters, the defendants in these suits avoided payment. Respondent therefore feels that this form of application and resulting contract is necessary and imperative in order that future collections for service be assured.

It is our opinion that respondent's form of application is intolerable and indefensible.

All enterprises are subject to poor credit risks, and many methods and practices have been devised to furnish the maximum amount of credit protection and credit collection, among which is included the form of contract between creditor and debtor, containing a confession of judgment proviso. However, a public utility enjoys additional and more powerful weapons in credit relations between itself and its consumers, namely, a consumer cash deposit held by the creditor until such time when the patron indicates sufficient credit responsibility, and, most important, the control of the discontinuance of a monopolistic service in the event of the failure of proper creditor-debtor relationships.

We find that prior to the initiation of respondent's presently used form of written service application, respondent had the advantages of deposit requirements from its patrons and that it could discontinue water service for the nonpayment of bills for service. If respondent did not protect itself by these available methods we cannot find respondent's present or prospective consumers at fault. While it is possible that respondent requested or accepted confession of judgment contracts from existing financially embarrassed patrons in lieu of increased deposits or discontinuance of service there can be no justification for the arbitrary requirements of respondent, binding an applicant for service to a judgment proviso.

Respondent has the protection of an enforced deposit requirement and is further protected by the rules and regulations of its filed tariff, pertaining to discontinuances of service as follows:

"22—All bills not paid within fifteen days from date of bill shall be subject to a penalty of 10 per cent, and if not paid within thirty days after the date of the bill service may be discontinued by the company after five days' written notice to the consumer."

[2] With respect to complainant's allegation that the deposit required of him is contrary to law and the rulings of the Commission, during the period when complainant sought and secured water service from respondent, the utility was operating under the Public Utility Law and the orders and regulations empowered by the law, to wit, Temporary Regulation No. 2, issued June 1, 1937, which provides, among other stipulations, the following:

"3. That every public utility, other than a common carrier, may require deposits from those patrons or ratepayers whose applications for service are filed subsequent to June 1, 1937,

provided that in no instance shall a deposit required under this order exceed the estimated average monthly bill, and provided further that all such deposits shall be returned to the depositor with interest thereon at the rate of 6 per cent per annum when he shall have paid undisputed bills for services over a period of twelve consecutive months."

Under this temporary regulation respondent had the right to require deposits within the limitations set forth therein.

However, since October 4, 1937, Temporary Regulation No. 2 and modifications thereof have been rescinded, and Regulation No. 2 has been operative. Without citing at length the provisions of Regulation No. 2, we find that respondent water company is entitled to deposit requirements within the limits provided by law and regulations, but respondent's request for the approval of its right to collect a $10 deposit from each consumer and to retain the same during the entire life of its service contract with each consumer is contrary to § 305 of the Public Utility Law and Par. 2 of Regulation No. 2.

[3] With respect to complainant's prayer that the Commission order respondent to return to complainant the $10 heretofore paid as a deposit for the payment of future water service, respondent offers of record its willingness to return the same and its unsuccessful efforts to do so in the past. However, respondent states complainant has not paid for water service rendered in the amount of $7.75. Manifestly the deposit should be returned in full if the bill for water service has been paid, or the balance accruing to complainant should be returned.

Respondent in its answer has specifically prayed that it be given the right to demand from each consumer a written application, in form and substance the same as complainant's Exhibit "C," which contains a confession of judgment proviso. Respondent has thereby sought a positive ruling thereon.

The matters involved having been fully considered; therefore,

Now, to wit, September 26, 1938, it is *ordered:* That the complaint be and is hereby sustained, subject to the limitation hereinafter made.

It is *further ordered:* That the prayer of respondent for the right to demand from each consumer an application containing a confession of judgment be and the same hereby is refused.

It is *further ordered:* That Crystal Springs Park Water Company cease and desist in its practice of combining a written form of application for service with a confession of judgment proviso; or of making any confession of judgment a requisite for water service.

It is *further ordered:* That Crystal Springs Park Water Company return to its applicants or consumers such presently held applications for water service which are combined with a confession of judgment proviso, and such other confessions of judgment that were obtained as a requisite for water service.

It is *further ordered:* That Crystal Springs Park Water Company return to its consumers such deposits with interest, as are presently retained in violation of the Commission Regula-

tion No. 2, and shall exact no deposits other than those provided for by regulation of this Commission.

It is *further ordered:* That Crystal Springs Park Water Company forthwith return to complainant such deposit or balance due and payable to complainant, with interest from July 21, 1937, at the rate of 6 per cent per annum.

MINNESOTA RAILROAD AND WAREHOUSE COMMISSION

Re Garden Valley Telephone Company

[M-2419.]

Monopoly and competition, § 84 — Telephone extension — Installation of pay station.

The Commission, under the provisions of § 5299, Mason's Minn. Stats. 1927, cannot legally authorize a telephone company to install a pay station at a point where another company is maintaining a pay station when the service rendered by the other company is complete and adequate and meets all requirements of public convenience and necessity, while installation of the new service would deprive the other company of revenue from that point and would cause a duplication of toll lines and equipment.

[September 19, 1938.]

APPLICATION *by telephone company for authority to install a pay station at a designated point; denied.*

By the COMMISSION: This matter came on for hearing before the Commission on application of the Garden Valley Telephone Company for a certificate of public convenience and necessity to install a pay station at Marcoux Corners.

APPEARANCES: Thomas Vollum, General Manager, Erskine, and A. R. Olstad, Plant Manager, Erskine, for the petitioners; Mrs. Pearl I. Kundert, Red Lake Falls, F. L. Loefler, Red Lake Falls, Miss Albia Twoumbly, Chief Operator, Red Lake Falls, and J. C. Crowley, Jr., St. Paul, for Red Lake Falls Telephone Company; A. N. Fancher, Supervisor of Telephones, St. Paul, for Minnesota Railroad and Warehouse Commission.

It appears that the Garden Valley Telephone Company is a coöperative enterprise, incorporated under the laws of the state of Minnesota, and operating a system of 16 local telephone exchanges with headquarters at Erskine, Minnesota.

Marcoux Corners is situated about 7 miles west of Mentor and 8 miles south of Red Lake Falls, Minnesota. It consists of a filling station and lunch counter constructed at the intersection of state highways Nos. 2 and 32.

About the year 1931 the Red Lake

Falls Telephone Company extended a metallic line from its Red Lake Falls exchange to Marcoux Corners, establishing a pay station at this point. About this same time the Garden Valley Telephone Company extended a grounded line from its Mentor exchange to Marcoux Corners, establishing a connection with Red Lake Falls by means of a grounded phantom circuit over the Red Lake Falls—Marcoux Corners line. This line of the Garden Valley Telephone Company had no physical connection with Marcoux Corners.

Early in 1937 a power line was constructed, paralleling the grounded line of the Garden Valley Telephone Company between Mentor and Marcoux Corners. Inductive interference set up by this parallel construction made it necessary to discontinue the Mentor portion of the Red Lake Falls line at that time.

The Garden Valley Telephone Company also has a toll line extending from its Plummer exchange to Red Lake Falls. However, it is conceded that service over this line is not of the best. At the present time all calls originating at Marcoux Corners are passed through Red Lake Falls to Crookston or through Red Lake Falls to Plummer and the toll system of the Garden Valley Telephone Company.

If a pay station was installed at Marcoux Corners, connecting with the Mentor exchange, calls originating at Marcoux Corners could be routed through Mentor to Crookston, which would deprive the Red Lake Falls Telephone Company of revenue derived from its portion of the line haul between Marcoux Corners and Red Lake Falls and would be a duplication of toll lines and equipment, which is contrary to the provisions of § 5299, Mason's Minn. Stats. 1927, which reads in part, as follows:

"No lines or equipment shall be constructed or installed for the purpose of furnishing local, rural, or toll telephone service to the inhabitants or telephone users in any locality in this state, where there is then in operation in the locality or territory affected thereby another telephone company already furnishing such service, without first securing from the Commission a declaration, after a public hearing, that public convenience requires such proposed telephone lines or equipment. . . ."

After due consideration of all matters herein contained and being fully advised in the premises, the Commission finds:

1. That the Red Lake Falls Telephone Company is maintaining a pay station in the store of Proulx Brothers located at what is known as Marcoux Corners.

2. That the service rendered by said Red Lake Falls Telephone Company is complete and adequate and meets all requirement of public convenience and necessity.

3. That the Commission cannot legally grant petitioners' request as it is contrary to the laws of the state of Minnesota.

It is therefore *ordered*, that the petition of the Garden Valley Telephone Company for a certificate of public convenience and necessity to install a pay station at Marcoux Corners, be and is hereby denied.

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on personnel changes, recent and coming events.

New Door Safety Device

AN ingenious, automatic safety control for Kinnear Motor Operated Rolling Door, as well as other types of Kinnear upward-acting doors, has just been announced by the Kinnear Manufacturing Company, Fields Avenue, Columbus, Ohio. Through its application on the door, it practically eliminates the possibility of injury to persons or damage to cars, in case doors are carelessly closed by attendants who fail to note whether or not the opening is completely cleared when they push the control button. This has been a hazard in the past in situations where operating control stations are remote or out of direct view of the doorway.

Briefly, this device works as follows: A compressible, air-containing weatherstrip is placed along the entire length of the bottom edge of the door. In case the door contacts an obstruction upon closing, it compresses the weatherstrip, which thereby forces air through an impulse switch, causing the door to either stop its closing travel or immediately revert to its fully open position, depending upon the method of connection to the door control circuit. The slightest pressure on the weatherstrip insures positive action.

The precision and rapidity with which this device operates can be judged by the fact that a man can allow a door to come down on his head with practically no discomfort. While the accompanying illustration gives a general idea of this equipment, further details may be secured from the manufacturer.

American Coach Issues Manual

AMERICAN Coach & Body Co., Cleveland, Ohio, have just published a sixteen-page pocket-sized winch manual giving complete instructions for the operation and maintenance of their winches and power take-offs for public utility construction.

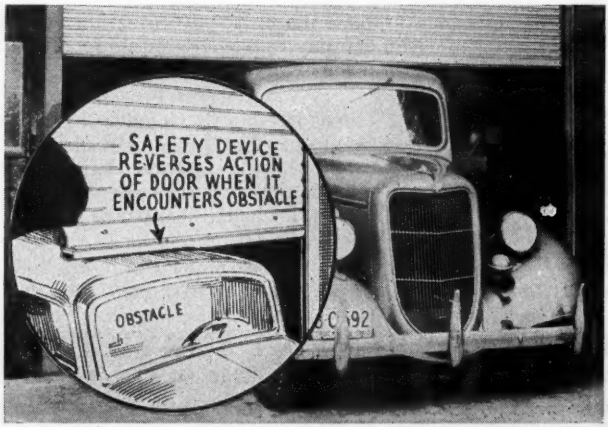
The booklet contains diagrams and illustrations and describes the adjustment and repair of this equipment in detail.

Copies of this booklet may be secured direct from the manufacturer.

G-E Announces New Relay For Street Lighting

A NEW low-priced photoelectric relay to control the operation of street lights has been announced by the General Electric Company. The new relay, employing the same principles as former relays to turn the lights on or off when nature's level of illumination drops below or rises above a level predetermined for safety, is available at a price less than half that of previous photoelectric relays designed to control street lighting. The new relay comes in a compact housing about one-eighth the size of former equipment and weighs but 10 pounds. Formerly, such equipment weighed 35 pounds.

A separate holder for the controlling element, the phototube, is available to enable the installation of this tube far above the ground, away from stray light and shadows of nearby objects. The relay box then can be located



within the service man's reach. He need not climb the pole, as was necessary with former equipment. The separate holder for the phototube is available at a small additional cost.

New Dodge Truck Prices Substantially Lower

PRICES of the recently announced 1939 line of Dodge trucks which were given out at the National Motor Truck Show, New York City, by J. D. Burke, director of Dodge truck sales, showed substantial reductions from those of corresponding 1938 types. For the new ½-ton series, the price reductions range up to $24. For the ¾-ton models, the reductions are as high as $36. For the 1-ton models, the prices are as much as $35 lower. In the case of the 1½-ton models, the maximum price reduction is $40.

In releasing the new Dodge truck prices, Mr. Burke emphasized that the vehicles to which they apply are of new designs incorporating the last word in style, the latest engineering advances—larger cabs, larger bodies and many improved mechanical features that contribute to economy. All bodies and all sheet metal are given greatest possible weather protection by rust-proofing them before the finish is applied.

Mr. Burke explained that these new, lower prices are predicated on the fact that the new Dodge trucks are built in an entirely new, gigantic plant devoted solely to the manufacture of commercial cars and trucks. This plant, according to Mr. Burke, is the most modern establishment of its kind in the industry, with a capacity of seven hundred trucks per day.

J. & L. Appoints Hazlett

THE appointment of A. J. Hazlett as manager of the Strip-Sheet Sales Department of the Jones & Laughlin Steel Corporation was announced recently. He succeeds William Miller who was appointed district manager of the Corporation's Detroit office.

Mr. Hazlett has been president of the Eastern Rolling Mill Company, of Baltimore, Maryland, since 1927. His entire business experience has been in the steel industry.

Barber Burner Catalog

A NEW catalog (No. 38-A), fully descriptive of the entire line of the Barber Gas Burner Company of Cleveland, Ohio, is now available.

Attractively printed in two colors, the 48 pages of this catalog give "the important facts you should know about Barber burners." The Barber improved expansion principle for round conversion burners, a new feature in round conversion burners, is described in detail and handy installation diagrams are shown. The catalog is profusely illustrated showing the various types of burners for round, steam, vapor or hot water boilers and warm air furnaces and assemblies for rectangular boilers and furnaces. Barber burner specification charts are included, together with useful fuel consumption information. Barber burners for industrial uses and Barber accessories also are described.

The Barber company recently issued a new consumer folder (Form 9-38-A) which is available for distribution.

New G-E Radio Equipment for Utility Companies

A NEW line of low-priced, ultra-high-frequency transmitters and receivers has been announced by the General Electric Company. The new units are a 25-watt station transmitter, a 15-watt mobile transmitter, a superheterodyne station receiver, and a superheterodyne mobile receiver; and are for use in the 30- to 42-megacycle band by power companies, transit companies, police departments and other services.

With better electrical and mechanical performance, they cost one-fourth to one-third less than previous designs of G-E equipment for the same use.

Both transmitters have several outstanding features. The 25-watt station transmitter (approximately 30 inches by 11 inches by 12 inches high) has frequency control by a low-temperature-coefficient quartz crystal operating in a General Electric Thermocell. A self-contained rectifier power unit operates from a 115-volt, single-phase, 60-cycle supply. Other features include automatic level control, ample audio amplification to accommodate a velocity microphone, and tone calling.

The 15-watt mobile transmitter and dynamotor are built into a single unit to conserve space in the car trunk, simplify the installation, and eliminate cable connectors. The complete unit measures only 18 inches by 11 inches by 12 inches high. Resilient mounting for the dynamotor—a General Electric development—makes this unit construction possible and results in practically noiseless and vibrationless operation. Quick-heating, filament-type tubes provide full power in one and one-half to two seconds after the French-type handset is removed from the instrument-panel control unit.

No power is drawn from the car battery during standby periods except an intermittent drain of 3 watts for the crystal Thermocell in extremely cold weather. A start-stop switch on the transmitter chassis, pin jacks for a test meter, and a rotary switch make it possible for the operator to check quickly the operation of all circuits, tuning adjustments, and tubes.

The new receivers, with improved sensitivity and a noise-balancing circuit, provide greater coverage and better reception. Reduced image response and narrow selectivity characteristics assure little or no adjacent-channel interference; and carrier-off noise suppression stops unpleasant background noises during standby periods. Temperature compensation on the oscillator-tuning capacitor keeps the receiver tuned to optimum performance over a wide temperature range.

With this equipment, a comparatively inexpensive radio communication system can be established and maintained by power companies, transit companies and municipalities.

J & L Announces New Wire Rope Division

JONES & Laughlin Steel Corporation recently announced the completion of their latest unit, the Gilmore Wire Rope Division at Muncy, Pennsylvania. The new plant is now in full operation. Robert Gilmore is general manager of this division.

One of the outstanding improvements in wire rope manufacture offered by the new plant is the development of a positive lubricating element which the manufacturer believes will increase the life of wire rope. A large size brochure announcing the new division has been issued by the corporation.

Stanley Electric Announces Two New "Victor" Electric Drills

TWO new "Victor" Portable Electric Drills, Nos. 581 and 341, designed for use by maintenance men, contractors, automotive mechanics, plumbers and heating and ventilating contractors, are announced by Stanley Electric Tool Division, New Britain, Connecticut.

Sturdy, compact, low-priced, reserve power universal motors, No. 581 has a chuck capacity of 5/8 inches and No. 341 has a chuck capacity of 3/4 inches. Both drills have nickel steel gears, combination breast plate and spade handle, and pipe handle which is detachable for close-quarter work. They are specially heat treated and are full ball bearing.

Utility Accounting Conference Meets in Chicago

SPEAKERS of national reputation, representing governmental regulatory agencies as well as the educational, engineering, and the manufacturing phases of the business, will address the Second National Utility Accounting Conference to be held at the Palmer House in Chicago, December 12, 13, and 14, 1938.

Generally, three outstanding themes will dominate the discussions:

1. Economies in Accounting Processes
2. Plant Accounting and Depreciation Problems
3. Accounting Education, Ethics, and Training

Among the principal speakers who will address the conference will be George F. Mitchell, The Peoples Gas Light & Coke Company, Address of Welcome; L. L. Dyer, "Accounting Organization Problems"; W. T. Neel & W. G. Bourne, Jr., "Elimination of Duplication of Reports to Governmental Bodies"; Dr. E. W. Morehouse, director of Rate Research of the Wisconsin Public Service Commission, "Federal and State Regulations and Management Attitudes"; Willard J. Graham, University of Chicago, "Accounting Education, Ethics and Training"; R. C. Staebner, chief, Public Utilities Section, Internal Revenue Bureau, "Depreciation for Federal Income Taxes"; and Charles W. Smith, chief, Bureau of Accounts, Finance, and Rates, Federal Power Commission, "Problems in Uniform Utility Accounting."

Among other speakers well known in the public utility industries will be: S. J. Barrett, The Peoples Gas Light & Coke Company; H. D. Anderson, American Gas & Electric Service Corp.; F. M. Hunter, Hannum, Hunter, Hannum & Hodge; H. M. Tickle, The Commonwealth & Southern Corp.; G. M. Veselago, Day & Zimmermann; J. V. Cleary, Consolidated Edison Company of New York, Inc.; H. P. Taylor, Wisconsin Public Service Corp.; A. A. Lipschutz; C. E. Kohlhepp, Wisconsin Public Service Corp.; H. C. Davidson, Consolidated Edison Co. of New York, Inc.; H. L. Gruehn, Consolidated Gas, Electric Light & Power Company of Baltimore; H. C. Hasbrouck, H. C. Hopson Company; D. M. Jones, General Electric Company; M. R. Scharff, consulting engineer, New York; L. R. Nash, consulting engineer, Stone & Webster Engineering Corp.; R. A. Hornby, Pacific Lighting Company; E. C. Christensen, Price, Waterhouse & Company; T. O. Kennedy, Ohio Public Service Company; James A. Schultz; Francis J. Brett, Niagara Hudson Power Corp.; K. C. Campbell, Detroit Edison Company.

Guest speakers at an informal dinner to be held on Tuesday evening, December 13th, will include Dr. H. B. Dorau, Professor of Economics, New York University, who will speak on "Impact of Economics on Accounting"; Henry C. Perry Controllers' Institute of America, "Accounting after the First 100 Years"; and B. F. Weadock, Edison Electric Institute, "The Accountant's New Responsibilities." Major Alexander Forward, managing director of the American Gas Association will preside.

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Socony-Vacuum has "kept cases" on turbine operation. This experience is made available without cost to turbine men. Pamphlets prepared on this subject will be sent at your request. In addition, see the new movie called "The Inside Story," which reveals exactly what Correct Lubrication does. Just write to the nearest Socony-Vacuum office for these aids.

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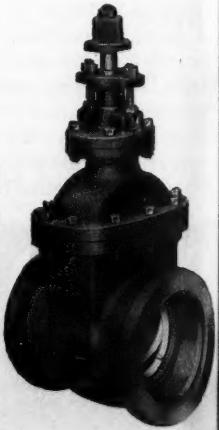
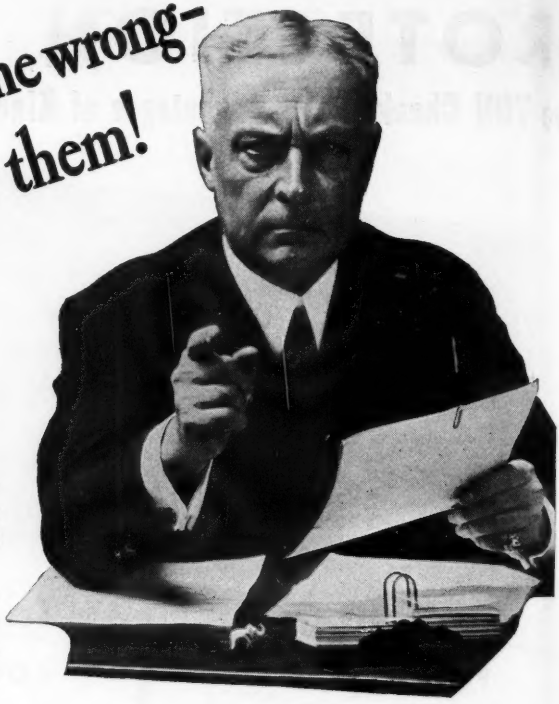


You've got me wrong—you pay them!



THE businessman pictured here is talking about taxes—government costs.

Is he complaining because he has to pay them?

Nope! He's complaining because he has to *collect*, or try to collect, most of them from *you*—in the prices charged *you*.

The *whole people must pay* the increased costs of government—the wage and salary earner as well as the business partner, and the *man without a job*.

The businessman would sing a different tune if these taxes were necessary to care for the needy. He has a heart, too.

But the fact is—only $1 out of $6 actually is spent on account of the needy today.

A big share of government costs is represented by more than 3½ million government employes *not* on relief rolls—who man an army of bureaus, many of which grind out rules, regulations and edicts which affect not businessmen alone but farmers, wage earners and consumers. They are busy policing, prying, restricting—on *your* money.

If you want to see better times return on a sound basis—if you want to see employment increase, factories busy, retail stores full of customers—you have a vital interest in seeing the country cut loose from the ball and chain of excessive government costs.

That's another way of saying, it's about time to help business. *What helps business helps you!*

You Pay Hidden Taxes

Because the tax collector does not knock at the door it does not follow that no taxes are paid. For example: One-sixth of the electric light bills went for taxes . . . The sales slip for a cotton dress covered 125 taxes . . . Fifty-two taxes were included in the price of a loaf of bread . . . A pair of overalls carried 148 taxes.

• • •

Government costs equal $28 for every $100 of income (more in case of *earnings*) of every man, woman and child—$22 of which are current taxes, and $6 debts.

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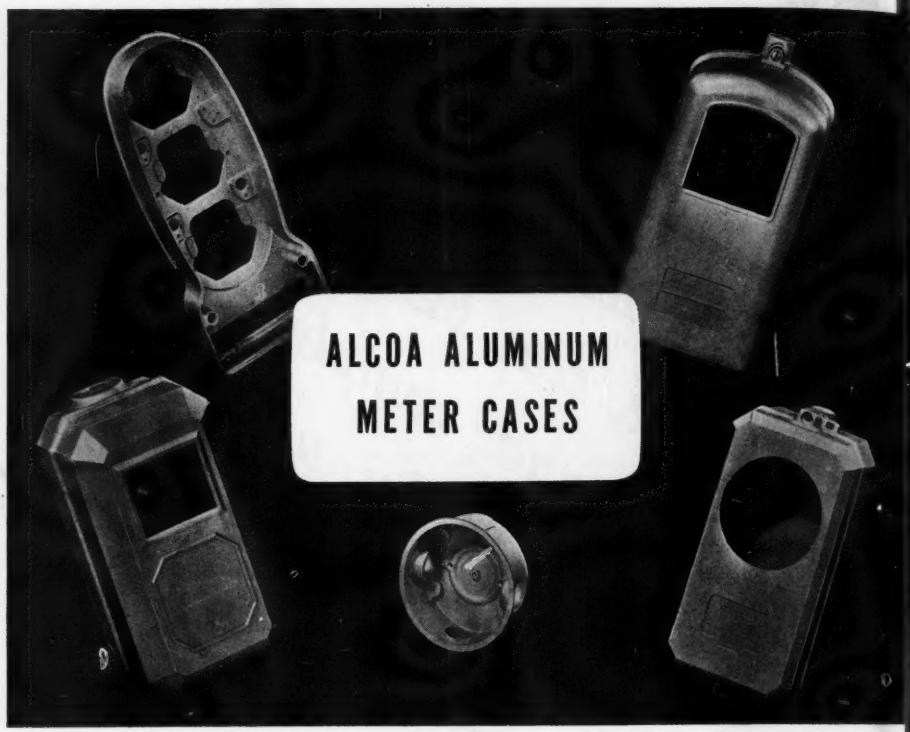

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AND HELP YOUR OWN MAINTENANCE COSTS, TOO

Housewives agree that outdoor metering has many advantages. But, "What are you going to stick on the outside of my house?" has blocked many a well-intentioned program.

Make certain that your customers will have no regrets by mounting meters in Alcoa Aluminum meter cases. There's no rusting to hasten depreciation and cause installations to become unsightly. They never need painting. The natural Aluminum color is a neutral gray, blending perfectly with surroundings.

Aluminum meter cases have been adopted by many utilities. Die-cast or formed from Aluminum sheet, they are made to meet each company's exact requirements. In die-cast cases, lugs, fittings and bosses are cast integrally, with great accuracy of dimensions. Markings and instructions are reproduced in fine detail.

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PROFESSIONAL DIRECTORY

• This page is reserved for engineers and engineering concerns especially equipped by experience and trained personnel to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design and construction. « «

The PITTCO STORE FRONT CARAVAN *Returns!*

Another chance to tie up with this potent builder of new lighting customers! Another opportunity to sell more current by showing the merchants and property-owners in your territory the advantages of modern, business-building store front lighting and design.

The Pittco Store Front Caravan, with twelve scale models of modern, properly illuminated store fronts, is going to cover the entire country *again*. If it visited your territory on its first trip, you'll know how helpful it was to you in educating your prospects to a better appreciation of adequate store front illumination.

This time, the Caravan will cover your territory more broadly than before. Having presented its store front exhibit in all the metropolitan areas on its previous tour, it will this time present showings of its scale models in the more important *smaller* communities throughout your territory . . . giving every merchant and every property owner a chance to see it.

Watch for the return of the Pittco Caravan . . . and tie up with it in your sales efforts. Your nearest Pittsburgh Plate Glass Co. branch can give you specific information as to when it will revisit you.

Paint ✿ PITTSBURGH ✿ *Glass*
PLATE GLASS COMPANY

This new blade-type RIDGID cutter wheel assures you

quick, clean, low cost pipe cutting

• Like the blade of a good knife, this RIDGID cutter wheel blade is made of fine tool steel—for more cutting power and stamina. Where ordinary wheels are cut from bar stock, RIDGIDs are coined from tool steel sheets, hammered, heat-treated and cast into a solid hub. Many more cuts per wheel, quicker cutting, practically no burr . . . And thousands of users will tell you that this steel reinforced cutter, guaranteed not to break or warp, always cuts true, twirls easily to size, stands the gaff of hard use. For a tool a good workman can take pride in, for speedier better work and less cutter wheel expense, buy the RIDGID. Ask your Supply House—today.

THE RIDGE TOOL CO., ELYRIA, O.

RIDGID PIPE TOOLS

WHAT WILL HAPPEN?

WILL your breakers at Substation B open safely if you get a short circuit on Feeder 15? What will happen if they don't? Will those new factory loads change the stability of your system? What will happen if they do?

These are questions your engineers must answer today, tomorrow, and next week—just as in the past. But loads and other conditions change faster today than they did a few years ago. Your standard of service is better. Your customers expect more service at less cost. "What is the best thing to do next?" has become your question of the day.

To help you get the answers, General Electric engineers have made available the most modern type of network analyzer. Complicated calculations are thus greatly simplified. New generators and condensers are properly located. Modernization plans are clarified. A thousands questions vital to your future service record are answered more quickly and accurately. And the results are sure to bring greater freedom from "trouble," greater safety to workmen, and lower operating costs.

This improved network analyzer is another example of engineering service made possible through your continued purchases. It is an extra value—a short cut to improved service—that you can obtain only through those manufacturers who have the facilities and personnel to do this kind of work.

GENERAL ELECTRIC

Filing No. 170

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